

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:)
)
GARLOCK SEALING TECHNOLOGIES)
LLC, et al,) No. 10-BK-31607
)
Debtors.) VOLUME XVII
)
_____)

TRANSCRIPT OF ESTIMATION TRIAL
BEFORE THE HONORABLE GEORGE R. HODGES
UNITED STATES BANKRUPTCY JUDGE
AUGUST 22, 2013

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6596	4701
7237	4701
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997	4755

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1 THURSDAY MORNING, AUGUST 22, 2013

2 (Court called to order at 9:00 a.m.)

3 THE COURT: I guess we'll get started.

4 MR. KRISKO: Thank you, Your Honor. Mr. Glaspy was
5 on the stand when we last recessed and we'll call him again to
6 continue his direct examination.

7 I know, Your Honor, we only have a short portion of
8 direct examination with him planned, but it is going to touch
9 upon some confidential information.

10 THE COURT: All right. Well, I guess we'll have to
11 ask everybody who hadn't signed the confidentiality agreement
12 to leave. I'm sorry. We'll get you back in as quick as we
13 can.

14 (Sealed proceedings.)

15 DAVID MICHAEL GLASPY,
16 being first duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION (Cont'd.)

18 BY MR. KRISKO:

19 Q. All right. Good morning, Mr. Glaspy.

20 A. Good morning.

21 Q. When we last broke and the court went into recess, we
22 were discussing a case filed by the Simon, Eddins, Greenstone
23 firm, the case of Howard Ornstein. Do you remember that case?

24 A. Yes, I do.

25 Q. Am I correct he was an electronics technician that was a

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1 plaintiff who had sued Garlock?

2 A. That's correct.

3 Q. Okay. Now, I wanted to ask you a little bit more about
4 that case.

5 During the course of the development of discovery in that
6 case, was Mr. Ornstein asked about whether he did work in the
7 boiler rooms or engine rooms of the ship or whether or not he
8 had access to -- or was exposed to any boilers during the
9 course of his occupational experience?

10 A. Yes, he was asked that at deposition.

11 Q. What was the nature of the questions he was asked and his
12 responses?

13 A. Well, we have an example of a page from the deposition.
14 They're talking about the USS Estes, E-s-t-e-s. That's the
15 ship he served on in the navy. And asked him if he ever even
16 saw the boiler and his response was no.

17 Q. Okay. I see you've got a page -- a transcript from his
18 deposition testimony.

19 A. Yes.

20 Q. There's other aspects of his testimony where this was
21 addressed?

22 A. He was asked repeatedly about the boiler over the span of
23 several days of deposition testimony.

24 Q. Okay. I see this one he's asked, "During your time on
25 the Estes, did you ever have any occasion to work in the

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1 engine room or the fire room or the boiler room?

2 "No, I didn't work in any of that area.

3 "Do you have any reason to believe you may have been
4 exposed to any asbestos in the engine room or the fire room or
5 the boiler room on the Estes?"

6 And he says, "No."

7 A. That's correct.

8 Q. And that's an accurate depiction of his testimony in the
9 case?

10 A. Yes. And there was additional questions about the boiler
11 room on the Estes.

12 Q. Okay. Here's some more; is that right?

13 A. Yes.

14 Q. And again, is he testifying that he was around the
15 boilers on the Estes?

16 A. He's denying he was ever in the boiler room or ever near
17 the boilers or ever worked on the boilers.

18 Q. Okay. How about this portion of the testimony in your
19 slides, what is he being asked here?

20 A. Well, it's again the same question. Matter of fact, the
21 questioner says, It may seem silly, but I have to ask you
22 anyway, and again asks him about boiler work on the Estes and
23 he says no.

24 Q. Okay. And even more testimony?

25 A. Yes. It was repeated over and over again over several

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1 days.

2 Q. Okay. Now, we talked a little bit about the trust claims
3 that Mr. Ornstein had filed that Garlock has obtained through
4 these proceedings. Was there other information that reflected
5 upon this testimony that Garlock obtained concerning the
6 Ornstein case?

7 A. There were trust claims submitted to the boiler
8 manufacturers.

9 Q. Okay. And you've got here -- what do you have here?
10 This is GST1199.

11 A. This is a declaration in support of his trust claim,
12 signed under penalty of perjury, and submitted to Combustion
13 Engineering, which is a boiler manufacturer, and he is
14 contending that he was exposed to the boilers while on the USS
15 Estes.

16 Q. Okay. And is this consistent with his testimony in the
17 underlying case?

18 A. Absolutely not.

19 Q. Okay. How would this information have impacted Garlock's
20 resolution of the case?

21 A. Well, boilers on navy ships are generally covered with
22 layers of block, which is the amphibole-containing friable
23 insulation. And they're huge, huge pieces of equipment. So
24 there's just literally tons of asbestos in the boiler rooms.

25 Q. Okay.

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1 A. That would have -- as I described last week, that would
2 have been very useful in our defense.

3 Q. Okay. Would it have impacted how Garlock resolved the
4 case?

5 A. Yes, because the defense would have been stronger and
6 better. I would have not recommended the number that I
7 recommended to my client to settle this case.

8 Q. Okay. And just for the record, we discussed last time
9 there were other -- in fact, many other trust claims that were
10 discovered by Garlock in these proceedings; is that right?

11 A. And they were all supported by declarations signed by
12 Mr. Ornstein, that's correct.

13 Q. The last time we talked a little bit about another trust
14 claim from Mr. Ornstein. And I asked you how you would use
15 trust claims if you had access to them in an underlying case.
16 Give the court some context -- would you mind reviewing
17 briefly with the court how you would use trust claims.

18 A. Would be used the same way I use interrogatory answers.

19 You can have the trust claim submitted in evidence as an
20 admission by the plaintiff and just publish it to the jury.

21 You can use it to cross examine the plaintiff if he's
22 denying those exposures, either refresh his recollection or
23 impeach him.

24 You can use it with the plaintiff's industrial hygienist
25 to have them comment on the exposure levels that the

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1 insulation on these products would be giving off, the
2 thousands of fibers per CC.

3 You could use it with their medical doctor or expert
4 witnesses to say these exposures are undisputed causes of
5 mesothelioma.

6 And then lastly, you could, of course, use them with your
7 own experts in the same manner.

8 Q. Okay. Now, we've looked at the Combustion Engineering
9 trust claim that Mr. Ornstein filed. We last time talked
10 about the claim he filed against Armstrong World Industries.

11 Now, going back to the period before those companies
12 filed for bankruptcy, would those companies typically -- if
13 those companies were in litigation, would they settle cases,
14 the ones that Garlock was in?

15 A. I can't recall any cases that they actually went to
16 trial. So yes, they would settle the cases.

17 Q. Okay. How would Garlock develop evidence of exposure to
18 those settling defendants in cases prior to their
19 bankruptcies?

20 A. Well, since they were in the litigation, they would have
21 responded to discovery. The plaintiff would have responded to
22 discovery admitting to the exposures in interrogatories and in
23 deposition.

24 And at trial, even though Combustion Engineering, say,
25 had settled out, the discovery -- their responses are

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1 admissible as well as the plaintiff's discovery responses
2 regarding his exposures. And you could use it the same way as
3 you could use a trust claim form as I just described it.

4 Q. Okay. Specifically, how would you compare the kind of
5 information you had as it pertained to settling defendants in
6 the 1990s to trust claims such as the one that's depicted
7 here?

8 A. Well, it's, as I described it, using the same. So it's
9 identical. However, I believe the trust claims would even be
10 stronger because you now have the plaintiff saying not only
11 was he exposed, but he's entitled to those funds, which means
12 he's contending that that exposure was a substantial factor in
13 causing this disease.

14 Q. Okay. Now, prior to the bankruptcy wave, were there ever
15 any situations where a plaintiff in litigation against Garlock
16 attempted to minimize his exposures to the products of
17 defendants who had settled in the litigation?

18 A. Absolutely that happened.

19 Q. Okay. How did Garlock deal with that situation?

20 A. Well, we would obtain the discovery responses from the
21 plaintiff, like interrogatory answers, and use them at trial
22 and either refresh his recollection or use it to impeach him.

23 Q. And was Garlock able to use that information to make its
24 defense against -- involving settled defendants?

25 A. Routinely.

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1 Q. Okay. All right. Well, let's turn to another case.

2 This is the Treggett case, and the court has heard some about
3 this before. And I think you have even testified about the
4 Treggett case when you were here in March of 2011; is that
5 right?

6 A. That's correct.

7 Q. Okay. You were the lead trial attorney in that case.

8 A. I was.

9 Q. Can you set for the court the basic circumstances of the
10 case.

11 A. Mr. Treggett was a fairly young mesothelioma plaintiff.
12 He was a machinist mate in the navy. He was stationed on
13 board a U.S. nuclear submarine. And he was -- went through
14 the normal discovery and during discovery he described
15 insulation on pieces of equipment. Those equipment
16 manufacturers were defendants in the case at the time. And it
17 seemed like a fairly standard, normal, run-of-the-mill navy
18 exposure case that I dealt with for 20 years.

19 Q. Okay. You say it seemed like a normal case. Was there
20 anything different about Treggett?

21 A. Well, there was a trial. Things changed at trial.

22 Q. How so?

23 A. His depo testimony again described generically insulation
24 on board -- on lots of equipment. And at trial all of a
25 sudden he minimized that to the point where he said he spent

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1 70 percent of his time using gaskets, 30 percent of his time
2 working on equipment in general. And finally said, Well, yes,
3 we did have to look at the insulation or touch insulation, but
4 that was less than 3 percent of my time.

5 So it was, again, a very -- a minimization of that
6 exposure.

7 Q. Okay. And are you saying that that was a new
8 circumstance that you had not faced in the litigation before?

9 A. I had seen attempts to minimize some exposures, but
10 nothing to that extent. That was -- that was quite a change
11 from the normal.

12 Q. Prior to trial, did Mr. Treggett identify specific
13 insulation manufacturers that he had come into contact with?

14 A. No, he did not.

15 Q. Okay. Was there anything else about the Treggett case
16 that was -- that was different in your view?

17 A. Well, we didn't have any identification of manufacturers
18 so we were forced to try to get insulation information, that
19 is put insulation on board USS -- I forget the name of the
20 ship. It was a nuclear submarine. We knew from prior cases
21 that nuclear submarines had Unibestos. It was specified by
22 the nuclear navy as the insulation of choice.

23 So we called in Commander Delaney as a witness and he
24 testified as to Unibestos should have been or would have been
25 aboard.

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1 We also called Dr. Robert Sawyer who had been -- served
2 as a medical officer on board nuclear submarines and he said
3 the same thing.

4 Q. Okay. So is it fair to say that this was an early
5 example of where Garlock needed to engage outside witnesses to
6 try to develop specific identification of asbestos-containing
7 products?

8 A. I know it's the first time I had to do it.

9 Q. Okay. You've described Mr. Treggett's case as one
10 talking about exposure on a submarine. Was his work history,
11 did it include locations where he would have -- or he may have
12 been exposed to other asbestos-containing materials?

13 A. Yes. As part of his training to go up in class, he spent
14 quite a few months at Mare Island Naval Shipyard which is in
15 Vallejo, California. And at deposition he claimed that he
16 spent all that time in the classroom and had no exposures.
17 Now, shipyards, of course, are well-known to having huge
18 exposures from insulation products. He denied it and he
19 denied it at trial.

20 Q. Okay. So there was no evidence of exposure at Mare
21 Island during the trial; is that right?

22 A. That is correct.

23 Q. Okay. Well, tell us about the trial. How did Garlock
24 try to make its defense of the case at trial?

25 A. Well, as I pointed out, we tried to use experts to

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1 identify the insulation product that he would have been
2 exposed to on board the ship. And ultimately, the judge ruled
3 that even though their testimony was based upon navy records
4 and navy regulations, that since those two witnesses were not
5 on board that specific naval ship, he did not allow us to put
6 Unibestos or Pittsburgh-Corning on the verdict form and
7 therefore we were not allowed to argue that to the jury as a
8 cause of his mesothelioma.

9 Q. Okay. How did the plaintiff respond to Garlock's
10 attempts to prove the Unibestos exposure, for instance?

11 A. I believe earlier in this trial there was some -- or the
12 argument of Ron Eddins, the plaintiff's trial attorney, where
13 he argued to the jury, obviously very effectively, that we've
14 been talking about Unibestos and Pittsburgh-Corning throughout
15 the trial. And at the end he said they're not on the verdict
16 form. It was never here. Basically, it was a defense lie.

17 Q. Okay. Now, we talked a little bit about information
18 Garlock has developed in this case. Have you had a chance to
19 look at the information that Garlock has obtained as it
20 pertains to the Treggett matter?

21 A. Yes.

22 Q. Okay. What did that show you?

23 A. Well, as you can see, there were 14 trust claims filed as
24 to Pittsburgh-Corning which is the manufacturer of Unibestos
25 which we were, of course -- was a major issue in this trial.

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1 The trust claim has not yet been filed because obviously the
2 trust has not been set up, but a ballot was filed contending
3 that he was exposed.

4 Q. What kind of information was contained in the trust
5 claims and other information that -- that was important to
6 you?

7 A. Well, the other thing that stands out is that he filed
8 six trust claims alleging exposure to insulation products at
9 Mare Island after denying that at trial.

10 Q. Okay. Now, what about the nature of the trust claims,
11 are the trusts against which Mr. Treggett made claims, were
12 they -- were the nature of those products -- would that have
13 been important to Garlock?

14 A. Yes. A majority of these are, as I've described earlier,
15 the amphibole asbestos insulation products, AC&S, Armstrong,
16 EaglePicher, Fiberboard, Keene, Owens Corning, Raybestos,
17 Western Asbestos. They all manufactured and supplied those
18 friable amphibole insulation products.

19 Q. Would the information that Garlock has obtained through
20 this bankruptcy proceeding have impacted how Garlock
21 approached the case?

22 A. It would have impacted how I defended the case, that's
23 for sure.

24 Q. Do you believe, Mr. Glaspy, in your opinion, whether this
25 information would have impacted the outcome of that case?

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1 A. I firmly believe we would have defended this case like we
2 defended other cases with similar exposure.

3 Q. In looking at the Treggett case and the full record,
4 including the materials that Garlock has obtained in these
5 proceedings, how would you compare the evidentiary record to
6 cases you saw before 2000?

7 A. These exposures are exactly what you saw in the prior
8 cases. And you'd have this information in answers to
9 interrogatories, at deposition, the information coming from
10 the plaintiff's attorneys or the plaintiff himself. This same
11 information was there and used very successfully in our
12 defense.

13 Q. Okay. Well, let's turn now to what you've identified as
14 the second opinion that you've offered or you're going to
15 offer in this case, and let me ask you this. Do you have an
16 opinion, Mr. Glaspy, whether changes in California laws and
17 procedures have impacted defendant's trial risk in California?

18 A. Yes. Since approximately 2005 there have been changes in
19 the law, changes in general orders, changes in procedures, and
20 even in the budget problems of California that have severely
21 impacted the civil trial system and there has been a
22 significant decrease in asbestos case filings in the state of
23 California so that the risk, the trial risk in that state,
24 which was always a fairly big concern to me and to Garlock,
25 would be dramatically decreased as of today.

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1 Q. Okay. What is -- what is the basis for that opinion,
2 Mr. Glaspy?

3 A. The court's already heard some about the *O'Neil* case
4 which was preceded by the *Taylor* case in 2009, and that's the
5 case that held that equipment manufacturers are not
6 responsible for component parts, say, a gasket inside a valve.
7 *O'Neil* is a Supreme Court case that held the same way so now
8 it's the law of the land in California. And that was in 2012.

9 So in the 2000s, after the bankruptcy wave, most of the
10 cases that were being filed in California were out-of-state
11 plaintiffs whose ships stopped in a California port for a day
12 or a week, or whatever, and that gave them jurisdiction to
13 file in California. And it was a favorable plaintiff's
14 jurisdiction.

15 So we had -- most of the plaintiffs we dealt with
16 actually lived in other parts of this country. Those cases
17 were coming to California because it was a good jurisdiction
18 for them.

19 But what's happened is most of the big players, as we
20 know, have gone into bankruptcy. And then the equipment
21 makers are now shielded from liability. So that left a
22 handful of people that you could sue in a navy case and just
23 wasn't a very attractive jurisdiction.

24 Q. Were there other reasons that support your opinion?

25 A. Well, the other reason California was an attractive

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1 jurisdiction is that you were able to file your case, file a
2 motion for preference and get a trial date in 90 days. It had
3 to be started by 120 days so the court would set it between
4 that time frame. So you got your case to trial fairly
5 quickly.

6 Well, with the budget problems and the cuts to the court
7 funds, they have had to lay off -- we have no longer court
8 reporters in any courthouse. Clerks are gone. Judges are
9 sitting there not able to try cases. So you have -- and a lot
10 of judges have left. So you went from -- in San Francisco we
11 had twelve civil trial judges; I think we have three. It's --
12 you just don't get cases out. They'll give you a trial date
13 and then you trail and that case is trailed for over a year.

14 So the speedy trial is disappearing in California or has
15 disappeared. And again, that makes it less attractive to a
16 dying meso plaintiff.

17 And then lastly, the counties have had general orders in
18 place for the last almost 30 years and they have -- asbestos
19 judges in Alameda, San Francisco, and Los Angeles have
20 rescinded almost all the general orders. And what they found
21 is general orders made it very simple for a plaintiff's
22 attorney to file a case and proceed in an efficient manner
23 because it dictated the set of interrogatories that they had
24 to answer. In other words, one. Now if they sue 10 or 20
25 defendants, they have to answer 10 or 20 different sets of

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1 interrogatories, requests for admissions, requests to produce
2 documents. It becomes very burdensome.

3 So it went from being an easy jurisdiction for a
4 plaintiff's firm to a much more complicated and expensive
5 jurisdiction in which to operate.

6 Q. Okay. And these general orders, we've heard descriptions
7 of case management orders that some asbestos courts have
8 entered. Are these equivalent rulings by courts to manage
9 asbestos dockets?

10 A. That's correct. They would -- they can put a new one in
11 and add. And we had up to 50-some general orders in San
12 Francisco, and I think we're left back to one now.

13 Q. Okay. So they're no longer in place.

14 A. That's correct.

15 Q. Do you have any further information that supports your
16 view about filings in California?

17 A. Yeah. Well, I had noticed a decrease in the filings for
18 years. And then as part of this case, when I was asked to
19 express that opinion, I wanted to make sure that what I was
20 seeing was actually happening. So I went to -- in California
21 the court appointed Berry and Berry, a law firm that used to
22 do Celotex work, as the general coordinating defense counsel
23 for all medical issues, and so that they have all the
24 litigation. The county of San Francisco and Alameda require
25 plaintiffs' attorneys to file every case -- asbestos case they

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1 file to file it with Berry and Berry also. And they keep
2 track of all this information for the court and it's on a
3 website.

4 And so this information on this graph came from the Berry
5 and Berry website. And as you can see from 2005, the combined
6 filings in SF and Alameda Counties were 201 meso cases. The
7 annualized rate for this year is 63.

8 It's interesting if you look at this chart, as I
9 mentioned, in 2009 is when the *Taylor* case came out which said
10 equipment makers weren't liable for component parts. That was
11 just an appellate court level case. But you see a drop off in
12 filings. Then in 2012 when the supreme court said, yes, that
13 is the law of the land, again, it's dropping rather rapidly
14 after that point.

15 Q. And just for purposes of the record, you've got a chart
16 here that spans the years 2005 through 2013. Can you just
17 explain the -- in specific terms the numbers of filings and
18 how they have changed on an either quantitative or percentage
19 basis.

20 A. Math is not my strong point, but if I do the math right,
21 200 down to 63, it looks like a 70 percent decrease to me.

22 Q. Now, the court's heard testimony from Mr. David McLain,
23 in the case of the McLain law firm, about how his firm has
24 increased the number of mesothelioma filings.

25 Does his testimony -- how does his testimony compare to

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1 your observations?

2 A. Well, I went back after hearing that and checked my
3 records and Garlock's records, and throughout the 2005 to 2010
4 time frame, the filings against Garlock stayed fairly
5 consistent for five or six cases a year.

6 Q. Okay. And is it -- in terms of his testimony about his
7 firm, is that -- how would you compare that to other firms
8 that you deal with?

9 A. Quite a few of the firms in California have actually gone
10 out of business.

11 Paul and Hanley shut down. They had 15, 20 lawyers.

12 They filed 20 cases a month in their heyday.

13 Clapper, Patti, Schweizer and Mason have shut down.

14 Levenstein, Kaiser, Gornick have split and three-quarters
15 of the firm is doing pharmaceutical litigation. A few
16 attorneys are still handling some left over asbestos cases.

17 There's just been a significant decrease in the activity
18 in California in asbestos litigation.

19 MR. KRISKO: Thank you, Mr. Glaspy. I'll pass the
20 witness.

21 THE COURT: Mr. Swett.

22 CROSS EXAMINATION

23 BY MR. SWETT:

24 Q. Good morning, sir.

25 A. Good morning, Mr. Swett.

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1 Q. Let me ask you this. There is no rule or law in
2 California that requires a mesothelioma claimant to file any
3 trust claims before litigating his tort suit to conclusion,
4 isn't that so?

5 A. That is correct.

6 Q. So there's nothing to prevent a law firm from taking the
7 approach that says we should focus first on getting our living
8 mesothelioma claimant to trial and then using the trial record
9 to support trust claims submitted after the trial, correct?

10 A. They can do that if they wish.

11 Q. You have testified that the average plaintiff's verdict
12 in Northern California in a mesothelioma case has hovered
13 around two and a half to three million dollars for a
14 considerable number of years, haven't you?

15 A. I did. It's about two and a half in my opinion, three
16 and a half, and I said it would go up with the younger age
17 plaintiff than the usual 70, 80-year-old plaintiff. And it
18 would go up with larger economic damages.

19 Q. Right. Well, let me show you verdict data that
20 Dr. Bates, the plaintiff's -- the debtors' expert has compiled
21 for California.

22 Excuse me just a minute.

23 Let's take a look at ACC920. This is a chart we
24 prepared. The source is Bates White data. It compiles
25 year-by-year averages and the number of verdicts for

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1 California as a whole in mesothelioma cases.

2 And as you can see, in most years the average is
3 considerably above what you regard as the normal average,
4 isn't that so?

5 A. My experience is all I can comment on. Dr. Bates has
6 access to an incredible amount of data, which I don't. I
7 wouldn't question these numbers.

8 Q. And in February, if we focus on the period 2001 and
9 later, we see that the averages are quite considerably above
10 what in your experience has been the norm, correct?

11 A. Not really. In 2003 it's 2.5. When I'm saying 2.5 to
12 3.5, it's on the low end.

13 2007, 3.8. Again, you add economic damages to the 3.5,
14 you could dwarf that 3.8 number.

15 What I'm saying to you is a dying person or a wrongful
16 death, that life is worth something to a jury and the average
17 I see is two and a half to three and a half.

18 Q. Right.

19 A. With extenuating circumstances it can go up.

20 Q. And in the 2003 instance that you point to, there was one
21 trial, one verdict.

22 And look at the 2011 results where there were seven
23 trials averaging more than \$12 million.

24 You're aware of the *Grigg* case?

25 A. The recent case against Owens-Illinois, the manufacturer

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1 of the friable amphibole insulation? I am.

2 Q. That was in Alameda County?

3 A. It was.

4 Q. That was a widow more than 80 years old?

5 A. It was.

6 Q. She had economic damages of just \$300,000.

7 A. I don't know that.

8 Q. The verdict in that case was \$27 million?

9 A. There was punitive damages involved. Very extensive
10 punitive damages.

11 Q. Now, the Kazan firm focused its practice at a fairly
12 early date on mesothelioma claims, correct?

13 A. That is correct.

14 Q. Was it, in your experience, the first significant law
15 firm to do so?

16 A. In the West that certainly is true. I'm not sure about
17 in the East Coast. I never really was involved in the
18 Northeast.

19 Q. Isn't it also true that the Kazan firm achieved the
20 highest mesothelioma settlement values with Garlock of any
21 firm in the jurisdictions that you cover?

22 A. That's not true.

23 Q. Were the Waters and Kraus settlement values higher?

24 A. They were.

25 Q. We'll come back to that.

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1 I want to show you some information about the Kazan
2 firm's verdicts in mesothelioma cases.

3 MR. SWETT: Can we have ACC917, please.

4 Q. Can you see that clearly?

5 A. Yes, I can.

6 Q. Do you follow the verdicts that are rendered in the
7 jurisdictions where you practice?

8 A. It depends on where they're reported. A lot of times
9 you'll get a newspaper snippet that is wholly inaccurate, if
10 you will. I try to talk to the attorneys who are involved
11 when I hear about a verdict and get the scoop on what happened
12 and the why and what have you.

13 Q. Well, according to this summary, between 2001 and 2013,
14 the Kazan firm achieved verdicts ranging from a little more
15 than 4 million to a little more than \$27 million with a total
16 of eight verdicts over the period. Do you have any reason to
17 question that data?

18 A. Well, I was involved in two of those trials: The Plooy
19 case which we defended and the Smith case. Actually, the
20 Smith case in 2009, there's an example. He had 1. -- I think
21 it was 1.3, 1.5 million in economic damages and so the jury
22 gave him 2.5 million for his general damages. So that's
23 exactly what I'm saying.

24 Q. But you don't have any reason to question the data
25 presented in this summary.

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1 A. I can't verify these numbers. I do remember something
2 about the Peterson case, but I can't verify that being the
3 number. And the other ones I had no involvement in.

4 Q. On direct at trial transcript 4557 -- can we put that up.

5 At the very bottom, Mr. Krisko asked you this at line 24:

6 "So did the Kazan firm settlement values increase over the
7 2000s?"

8 And you gave the answer on line 1 of the next page: "It
9 did not."

10 Q. Do you recall that testimony?

11 A. I do.

12 MR. SWETT: Let's take a look, please, at ACC904.

13 Q. This is a summary of mesothelioma resolutions achieved by
14 the Kazan firm. And I'd like you to focus on the difference
15 between the 1990s and the 2000s.

16 Do you see, sir, that the average payment, excluding zero
17 pay resolutions, for the Kazan firm with Garlock resolutions
18 rose from a little more than 10,000 to a little more than
19 65,000 between the five year period 1995 to '99 and the five
20 year period 2000 to 2004?

21 A. I see that. The question that preceded this was, of
22 course, the 2000s, not from 1990s to 2000s.

23 Q. And then do you see the second five year period of the
24 2000s, the average jumped considerably to over \$200,000?

25 A. Well, number one, it's not 200,000. I have the letters

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1 which I produced, I have originals here. The average of the
2 settlement group I did in 2005 was 160,000. I don't know
3 where you get these numbers from.

4 But again, you can't exclude the zeros because once I
5 settle a group deal, Mr. McLain could and did allocate numbers
6 as he saw fit. And so if he gave one a zero, that wasn't my
7 call.

8 The average, including the zeros you have here, is
9 139,000, which is actually below what I testified to.

10 Q. In the second half of the 2000s, did you, sir, place
11 greater emphasis in your settlement negotiations with
12 plaintiffs' law firms in obtaining zero value dispositions as
13 part of group deals?

14 A. I would try to exclude out of our discussion any cases I
15 felt had absolutely no possible Garlock exposure. And then we
16 would do the group deal. And then they would allocate. And,
17 yes, they allocated zero to some of those plaintiffs.

18 Q. You don't deny the general pattern, even looking at the
19 column that computes the average taking into account zero pay
20 cases, that the averages achieved with Garlock by the Kazan
21 firm jumped from a little more than 56,000 to a little more
22 than 139,000?

23 A. I absolutely object -- I disagree with that. And as I
24 explained, and as the letter from Mr. McLain explained, we
25 saved cases from 2000, 2001, 2002, all of their biggest, worst

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1 cases against Garlock, and then we settled them as a group,
2 all of the worst cases at the end.

3 To properly get an average, you would have to take those
4 cases plus the prior settlements and average that whole
5 package to see what the actual average was for all the 2000
6 cases.

7 Q. Well, we could do that based upon the number of
8 resolutions, the percent paid and the data there, couldn't we?

9 A. Well, if you took the 56 and the 139, what's the average?
10 About 80,000, 90,000, somewhere in there. I think that would
11 be -- that would be accurate.

12 Q. Do you have any reason to believe Garrison did not record
13 the Kazan resolutions accurately?

14 A. I do not. I had no involvement with how they did what
15 they did. That's why I brought the original settlement
16 correspondence confirmation letters from Mr. McLain.

17 Q. Let me come back to a statement you made earlier
18 comparing the settlements achieved by Waters and Kraus and the
19 Kazan firm by calling up from the March 3, 2011, transcript of
20 your in-court testimony, page 101.

21 MR. SWETT: And if we could make it clear beginning
22 on 8 down to the bottom.

23 Q. At line 8 you were asked, "Let me ask you about several
24 plaintiffs firms. You mentioned, I believe, that you had
25 oversight over the region that contained the Waters and Kraus

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1 firm."

2 And you answered, "No. Well, I did up until -- I did up
3 until '94 and went regional and Waters and Kraus didn't come
4 into existence until thereafter, but I was appointed to be the
5 guy, because they had cases around the country, to be the lead
6 negotiator with them in all their cases.

7 "Question: But that was one of the firms that you
8 mentioned that decided to concentrate on mesothelioma cases
9 and press them to trial?

10 "Answer: Yes, they followed the example set by Steve
11 Cason about 15 years before.

12 "Question: In your experience, did Garlock pay that firm
13 relatively high settlement values?

14 "Answer: Compared to a plaintiff's attorney in South
15 Carolina with a case, absolutely. Compared to a Steve Cason
16 in California, no."

17 You were asked those questions and gave those answers,
18 didn't you?

19 A. That's correct.

20 MR. SWETT: Okay. We can take that down.

21 Let's call up the trial testimony of Mr. Glaspy at
22 page 4552, beginning at line 10.

23 Q. I want to call your attention to prior testimony you gave
24 in this proceeding regarding the Smith case; and in
25 particular, regarding Mr. McLain's recollection that there was

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1 some kind of high/low agreement or Mary Carter agreement
2 achieved between his plaintiff and Garlock represented by you
3 in the Frank Smith case.

4 Mr. Krisko asked you at line 10, "Now, Mr. McLain also
5 described this case as one in which there was either a Mary
6 Carter agreement or a high/low agreement with Garlock. Do you
7 agree with that?

8 "Answer: I do not. I heard that and I was surprised.
9 In California a Mary Carter agreement must be disclosed to
10 everybody in the court. No such thing was ever disclosed. I
11 never agreed to pay any such Mary Carter.

12 "High/low is different. It's not a Mary Carter. So I
13 think he was just a little confused.

14 "But, again, if we tried the case, we're not going to
15 agree to pay them money if we win. In a high/low you get a
16 defense verdict, you pay them the low number. We just didn't
17 go with cases to plaintiff's counsel with that approach. It
18 was, this is a fair number, take it or leave it.

19 "And again, they dismissed the case at closing argument
20 as to Garlock."

21 Do you remember that testimony?

22 A. I do.

23 Q. Let me show you something from the transcript of the
24 Smith trial.

25 MR. SWETT: ACC908, please.

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1 Q. Do you see on the second page, please, that -- you see
2 this is the Robert Frank Smith case in the caption; and then
3 on the second page the appearance of your law firm through
4 Brian O'Malley as noted.

5 A. Yes.

6 Q. He acted for your firm in that trial?

7 A. Yes. He's still with us.

8 MR. SWETT: Please go to page 3301 which is about
9 five pages in. Make clear the bottom half of the page.

10 Q. This is colloquy that took place outside the presence of
11 the jury. Line 16: "THE COURT: Okay. There is something
12 you wanted to take up outside the presence of the jury."

13 Mr. Harley then speaks. He was the plaintiff's lawyer
14 for the Kazan firm, was he not?

15 A. He was at the time, correct.

16 Q. "MR. HARLEY: Yes. The first matter is, Your Honor, the
17 plaintiffs and Garlock have reached a resolution on liability
18 and Garlock's settlement payment is dependent upon the
19 level -- of the total level of damages assessed by the jury.
20 So Garlock is not out of the case, but they're out for
21 liability. So the agreement is we're not putting them on any
22 of the liability questions. They can remain on the allocation
23 question for purposes of Prop 51. And while he might have a
24 right to make an argument to the jury, the Garlock attorney
25 will not make an argument to the jury. So..."

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1 Does that refresh your recollection that there was in
2 effect a high/low agreement between Garlock and the plaintiff
3 when that case was submitted to the jury?

4 A. There was no high/low agreement. There was a settlement.
5 We never paid a penny.

6 Q. There was a settlement --

7 A. High/low agreement we would have to have paid something.
8 We did not.

9 Q. There was a settlement keyed to the amount of damages
10 returned by the -- by the jury against other defendants,
11 correct?

12 A. I don't know what he's talking about. I wasn't there.
13 Mr. O'Malley was. I am the one that settled the case. It was
14 dismissed for a waiver of costs.

15 Q. Since the time that you last testified, have you done
16 anything to look into the Smith case to confirm whether or not
17 your recollection is correct?

18 A. I have not.

19 Q. And you don't dispute that there was a statement on the
20 record that Garlock and the plaintiffs had achieved a
21 resolution where Garlock might have to pay depending upon the
22 level of damages returned by the jury.

23 A. I have no way to dispute that that's a correct record or
24 not or that Mr. Harley said that.

25 Q. Are you aware that, in fact, the verdict form submitted

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1 to the Smith jury did not include Garlock as a party to whom
2 responsibility could be allocated?

3 A. I don't know. He just described they should in that
4 passage. I'm not sure --

5 Q. You don't know whether or not that came to pass.

6 A. We were not -- we were not there any longer. We settled
7 out.

8 Q. Mr. Glaspy, am I correct that in the 2000s, the federal
9 court was not the preferred forum for asbestos plaintiffs in
10 Northern California?

11 A. In -- actually ever since the -- as some of the problems
12 I described with the court system and the budget, many
13 plaintiffs firms such as Water Kraus, Simon Eddins, had begun
14 filing cases directly in the federal courts in the Southern
15 District of California.

16 Q. I want to focus you on the period before the bankruptcy
17 in this case.

18 As a general matter, won't you agree with me that
19 plaintiffs preferred to bring their cases in state court
20 before 2010?

21 A. Generally they still do. I'm just saying there's been an
22 increase in filings in the federal court system.

23 Q. Preferred to file in the state court in Alameda County
24 which is where the Kazan firm did most of its cases, correct?

25 A. That's correct.

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1 Q. And to some extent in San Francisco.

2 A. Well, not the Kazan firm. They never filed in San
3 Francisco.

4 Q. No, but --

5 A. Other firms.

6 Q. Right.

7 Now, in the early 1990s, the federal courts created a
8 multidistrict litigation for asbestos cases in the Eastern
9 District of Pennsylvania.

10 A. I know it was created probably at least 20 years ago. I
11 can't give you the year.

12 Q. I think you noted in your testimony on direct that it
13 became virtually impossible for a plaintiff whose case was
14 sent to the MDL to get a trial date.

15 A. That is absolutely true.

16 Q. It was known somewhat unaffectionately among the
17 plaintiffs bar as the black hole of Philadelphia. Did you
18 ever hear that phrase?

19 A. I heard the term graveyard before.

20 Q. The graveyard of Philadelphia.

21 So removal from the state court and trans -- to the
22 federal court and transfer to the federal MDL would count as a
23 significant defense victory as a practical matter in that era,
24 wouldn't it?

25 A. It would have.

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1 Q. Now, you testified that at a fairly early date in your
2 career, Garlock went along with some other defendants in
3 attempting removal of an asbestos case from the state to the
4 federal court. Do you remember that?

5 A. I do.

6 Q. That was sometime in the 1980s.

7 A. I think it was late '80s, early '90s. It was sometime --
8 it was quite some time ago.

9 Q. And I think you said it was Judge Peckman in San
10 Francisco who remanded the case?

11 A. It was the senior presiding judge in San Francisco. I
12 believe at the time it was Robert Peckham, I believe.

13 Q. Peckham.

14 A. Yes.

15 Q. He sent the case back to state court.

16 A. Immediately, yes.

17 Q. And there followed a similar experience in Alameda County
18 with Judge Armstrong.

19 A. Sandra Armstrong.

20 Q. And Garlock did not thereafter engage in removal
21 practice.

22 A. Actually, no, it was the first one in the early -- or
23 late '80s, early '90s with Judge Peckham. I never agreed
24 again to join someone that wanted to remove.

25 Q. Now, you questioned David McLain's testimony that having

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1 Garlock as a defendant in a case where it was not the main
2 target was useful because of Garlock's refusal to consent to
3 removal -- because Garlock's refusal to consent to removal
4 could prevent removal in some circumstances. Do you remember
5 that testimony you gave?

6 A. I do.

7 Q. Let me show you a report that we pulled off the website
8 of the federal MDL just since we were last in court.

9 MR. SWETT: ACC915, please. And go to the eighth
10 page.

11 Q. As you'll see, this is headed United States District
12 Court, Judicial Panel on Multidistrict Litigation, MDL875. In
13 Re: Asbestos Products Liability Litigation, Pennsylvania
14 Eastern, and it gives a date span of August 1, 2006 to
15 June 30, 2013. And there follows data concerning cases filed
16 and cases terminated, listing on the left the originating
17 district court. Do you see that, sir?

18 A. I do.

19 Q. And if we go down to the next page to the Ninth Circuit
20 portion, we see California Northern. That would be the
21 Northern District of California, right?

22 A. That's what it says.

23 Q. And it is recording here 843 cases filed and 6 -- I'm
24 sorry, 798 cases terminated, leaving 45 cases pending. Do you
25 see that, sir?

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1 A. I see those numbers.

2 Q. Now, you would not expect that these cases, these 843
3 cases that were sent to the MDL in that time span would have
4 originated in the federal court, would you?

5 A. I don't believe in this time frame there were 800 cases
6 filed. I think that's a misnomer. I think those are the
7 cases left over from prior years that they'd been trying to
8 clear out of the MDL system for many years.

9 Q. Well, let me show you another compilation we did which is
10 ACC916. This is just the results of research that we
11 undertook.

12 MR. SWETT: If you could make that clearer, please.

13 We decided to take a look by computer research and
14 see what we would find if we looked for removal and remand
15 cases in the Northern District of California.

16 And you can go ahead and show the whole thing.

17 Q. And we have here a list of some 39 reported decisions
18 spanning the period 1992 to 2013. Are you surprised to see
19 that level of activity of removal out of the Northern District
20 of California?

21 A. Not at all. This is a whole different issue. This is
22 not based on diversity. Most of these cases are based on
23 federal question, federal officer, because of submarines,
24 equipment on navy ships, aircraft, and the manufacturers of
25 those types of equipment remove cases because they're entitled

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1 to.

2 Q. There's also some cases in here involving diversity.

3 A. I'm sure there's a few in there, yes. But you're showing
4 me a list from the 1990s.

5 Q. No, no, this goes all the way up to recent times. I'm
6 just trying to see whether you agree that as a general
7 proposition, removal practice was alive and well in the
8 Northern District of California?

9 A. Again, what I'm saying is on most of these situations
10 it's because of the federal officer jurisdiction, not
11 diversity which was what we were talking about with
12 Mr. McLain.

13 MR. SWETT: You can take that down.

14 Q. Do you remember the *Buttram* decision -- I'm sorry,
15 *Buttram* trial, *Buttram against Owens Corning Fiberglas*?

16 A. I don't remember any specifics about the trial. I
17 know -- I believe it was tried by the Kazan firm and the trial
18 attorney was Shep Hoffman and Denise Abrams. But that's my
19 best recollection.

20 Q. And Mr. Barnes represented Garlock on behalf of your
21 firm?

22 A. Robert Barnes and I tried the case, that's correct.

23 Q. Let me read to you from the plaintiff's closing argument.
24 This would be at page 4210 of the transcript. He's commenting
25 on the comments made by Mr. Barnes. Commencing at line 11.

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1 He says, "Now Mr. Barnes talked a lot about was the product
2 defective? Were the gaskets defective? Are they the cause?
3 That's really a job that's up to you. And I agree with him
4 about that. I agree the testimony said there were a lot of
5 different kinds of gaskets. The testimony said that Garlock
6 was only one of them. And there was testimony here by an
7 expert that said they didn't give off very much dust. You
8 heard the witnesses and what they said. And it's your
9 decision and that's why we ask you to make this decision.
10 It's your decision."

11 Now, that's not exactly the kind of argument you faced in
12 the Fowlers or the Treggett case where the plaintiff's
13 principle focus was on Garlock as the target, was it?

14 A. Plaintiffs' attorneys arguments in every case were
15 dramatically different.

16 If it was Shep Hoffman, I believe it was, he made a
17 tactical decision at the end that his case against Garlock did
18 not come in very well. That he was trying to keep his
19 credibility with the jury. And he said, well, it's really up
20 to you. And I think it was a very -- a very gallant effort on
21 his part.

22 Q. Now, you're aware, sir, that a case is removable if
23 developments render it removable right up until the time it
24 goes to the jury. Are you aware of that?

25 A. I am not up to date on all the removal -- I never removed

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1 a case. I know once -- once the diversity is created, you
2 have a short period of time to remove it. That's what I know.

3 Q. And you are aware, are you not, that defendants who wish
4 to remove sometimes focus on a local defendant whose presence
5 is an impediment to removal on a diversity theory and argue
6 that the joinder of that defendant was without colorable basis
7 and was a mere sham to prevent removal, right? You're aware
8 of that tactic?

9 A. I have never seen it in my practice.

10 Q. Do you deny that it exists?

11 A. I don't know. I really don't know. I'm not an expert on
12 the field of removal.

13 Q. And if it -- if it is a tactic employed by defendants who
14 wished to remove back in the 2000s to get their cases into the
15 federal MDL, the graveyard, as you put it, then a plaintiff's
16 firm would be justified in being very cautious when it comes
17 to deploying appropriate tactics to prevent removal, wouldn't
18 it?

19 A. Yes.

20 Q. Now, I want to recall your testimony about the -- in
21 court the last time you were here concerning the Plooy case.
22 Is that how you pronounce that?

23 A. Your guess is as good as mine. It's been a lot of years.

24 Q. Let's call it the Plooy case, P-l-o-o-y.

25 You suggested, did you not, that the Kazan firm was

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1 litigating against Garlock in that case as a target?

2 A. No, I believe I said the target was Met Life. They did
3 put on a case against us because I refused to pay any money to
4 settle that case.

5 Q. And you showed the judge the witness list and you pointed
6 to the presence on the witness list of Drs. Longo and Templin
7 as witnesses listed to be called against Garlock.

8 A. Yes.

9 Q. In fact, though, neither Longo nor Templin testified at
10 all in the case, did they?

11 A. I don't recall. I believe there was industrial
12 hygienists. They had several others. I don't know which one
13 actually was called.

14 MR. SWETT: Let's take a look at ACC919.

15 I'm sorry, this is the wrong exhibit.

16 UNIDENTIFIED SPEAKER: 911.

17 Q. Take a look at 911, please. ACC911. We went through the
18 record in the Plooy case and we made a list of the witnesses
19 called by the plaintiff. And this is the list: Barry Horn,
20 Henry Plooy by videotape, Charles Ay, David Egilman, Heide
21 Brandner, Thomas Francis Iturraran, Henry Plooy, Jr., JoAnn
22 Plooy, and Henry William Plooy.

23 Do you have any reason to doubt the accuracy of that list
24 as one depicting who -- what witnesses, in fact, the
25 plaintiffs called in the Plooy case?

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1 A. I don't have recall to tell you if this was all of them
2 or not. But Charlie Ay was used against Garlock. I know
3 that. He's commonly used by the Kazan firm against Garlock,
4 and also Dr. David Egilman.

5 Q. Does this refresh your recollection that neither Longo
6 nor Templin testified?

7 A. It does not.

8 Q. And the court in its decision against Metropolitan Life
9 recited that in closing argument Garlock announced a
10 settlement -- I'm sorry. Mr. McLain announced a settlement
11 with Garlock, correct?

12 A. I don't know if I was there when he announced it. I do
13 know he agreed to dismiss.

14 MR. SWETT: Let's take a look at ACC919.

15 Next page, please.

16 Q. This is the decision of the court order, Re: Met Life's
17 Motion for Judgment, dated January 16, 2008. And in the
18 recitations of the procedural history commencing at page 2,
19 and, of course, it goes on to page 3.

20 Highlight the middle of paragraph 3.

21 The court says, "During closing arguments on February 20,
22 2008, counsel for plaintiff announced a settlement with
23 defendant Garlock Sealing Technologies, Inc."

24 Do you see that, sir?

25 A. I do.

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1 Q. Now, you said in your testimony on direct that JT Thorpe
2 and Son, a local defendant, was in the Met Life case and that
3 this would have absolutely prevented removal. You said that,
4 didn't you?

5 A. I did say JT Thorpe was a defendant in the case. They
6 submitted a witness list, as did Garlock.

7 Q. Are you aware, sir, that JT Thorpe and Son was dismissed
8 as a defendant at the close of the plaintiff's case?

9 A. I'm sure they were. I don't have recollection of it.

10 Q. Well, let's just confirm that by looking at ACC912.

11 This is the Plooy transcript. Let's go to page 11.

12 On page 11, the court makes comments commencing at line 2
13 and going to line 8 with reference to JT Thorpe. It concludes
14 that "The evidence isn't here. Dismissed."

15 Do you see that, sir?

16 A. (No response.)

17 Q. Are you having trouble finding it?

18 A. I'm just trying to see. "The evidence isn't here.
19 Dismissed." I'm not sure what he's referring to.

20 Q. If you would like to see the context, we can back up.

21 A. That's fine. I know they went out. They were -- JT
22 Thorpe was there because they were a local entity and they
23 defeated diversity.

24 Q. And on page 9 -- Mr. May represented JT Thorpe and Son?

25 A. Mr. Gordon May, yes.

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1 MR. SWETT: Go down to the bottom. Line 22.

2 I'm sorry, let's go back to page 6, down at line 25.

3 Q. This is Mr. May renewing his motion pursuant to Code of
4 Civil Procedure Section 631.8. He says at line 26, "There has
5 been no evidence whatsoever offered directly against JT Thorpe
6 and Son, Incorporated. And since Mr. McLain has no evidence
7 and no witness, and he apparently seems to be resting, it does
8 seem appropriate at this time to consider my motion for
9 judgment in favor of defendant, JT Thorpe and Son,
10 Incorporated."

11 Do you see that?

12 A. I do.

13 Q. So JT Thorpe and Son were dismissed when the plaintiff
14 closed its case against Met Life?

15 A. That's what this transcript appears to indicate. I know
16 it indicates for quite some time --

17 Q. He was the -- JT Thorpe and Son was the local defendant
18 that you said would have prevented removal?

19 A. That's correct.

20 Q. And if I'm right that you can remove a case that becomes
21 removable right up until the time it's submitted to the jury,
22 the Kazan firm was at some peril of removal in this action at
23 that stage, was it not?

24 A. No, actually, at this stage the jury had been waived by
25 all parties so it was a court trial.

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1 Q. So let's still call it until submitted to the finder.

2 A. Okay.

3 Q. If I'm right about that, there was some risk of removal
4 to the Kazan firm at this stage of the case, correct?

5 A. Very slight. If it's a judge trial, if it was removed,
6 it would have been remanded back the next day. It would have
7 delayed it for a few hours or a day.

8 Q. You say that despite your acknowledged lack of expertise
9 in removal.

10 A. I say that because I saw cases removed in Oakland and
11 sent right back.

12 Q. Now, I want to focus on the time -- you can take that
13 down -- when you reached your views that plaintiffs in cases
14 that you had particular responsibility for had failed to
15 disclose exposure evidence in the tort system that would have
16 had a material impact on your position.

17 A. All right.

18 Q. You were deposed as a fact witness in this case on
19 January 22nd, 2013.

20 A. It was late January. I will take your -- the date as
21 being correct.

22 Q. The day before that you sat down with Garlock's
23 estimation lawyers.

24 A. Actually, the day before that I sat in a conference room
25 and went through a box full of stuff.

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1 Q. You went through documents. You called it at the time of
2 your fact deposition a brief review, right?

3 A. It was. It was a review of the trust claim forms,
4 ballots, 2019 statements, interrogatory answers.

5 Q. And on the basis of that brief review, you testified the
6 next day that certain firms had withheld evidence in tort
7 discovery of exposure to asbestos products of bankrupt
8 entities.

9 A. Yes. It became very clear to me after that review.

10 Q. And sometime between that deposition on January 22nd and
11 February 8, 2013, when expert reports were due, you were
12 engaged by Garlock as an expert for this matter, correct?

13 A. That is correct. I pointed out after my deposition that,
14 quite frankly, a lot of what I have to say as a lawyer is
15 always opinion. And that it could become problematic if this
16 case is going to trial as to my testimony at deposition as a
17 fact witness. Quite frankly, quite a lot of the stuff I
18 testified to was, in essence, opinion testimony. So the issue
19 came up after my depo.

20 Q. But you sat -- you sat down to write your report with a
21 few days short of the deadline for filing it. You didn't have
22 much time to do more work on the substantive analysis, did
23 you?

24 A. Quite frankly, what was in my report was basically what I
25 said in my fact deposition.

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1 MR. SWETT: Your Honor, we're about to go into
2 individual cases, so I'm afraid we have to make sure the
3 courtroom is clear.

4 THE COURT: I think it has remained clear.

5 Q. Now, during your testimony in court on August 12 of this
6 year, you cited the Lundstrom case as an example of one where
7 the non-Garlock products of bankrupt manufacturers were
8 identified, right?

9 A. Lunsford, I believe.

10 Q. Lundstrom?

11 A. Lunsford. Ford, f-o-r-d.

12 Q. Lunsford. Thank you. Lunsford.

13 Now, Mr. Lunsford worked in the store room of a navy
14 ship.

15 A. Correct.

16 Q. In your experience has it been the case that people who
17 work in the store room and hand out the products are pretty
18 good at identifying what products they handled?

19 A. Most of the time.

20 Q. Now, you settled -- you testified that because of the
21 unavailability to you of evidence of Mr. Ornstein's exposures
22 to bankrupt products, you were forced to recommend to Garlock
23 that they settle the case for \$450,000.

24 A. That was one of the major factors, that's correct.

25 MR. SWETT: Let's look at the trial evaluation form

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1 for Ornstein which is ACC319.

2 Can you clarify that.

3 THE COURT: Lunsford or Ornstein?

4 MR. SWETT: We're going to go to Ornstein.

5 I'm sorry, on the next page.

6 Q. Now, this is a trial evaluation form prepared by a
7 paralegal in your office.

8 A. Yes. M.C. Clark.

9 Q. But despite its title in fact, the purpose of this form
10 when your firm filled it out was to record certain data
11 concerning a settled case, give it to Garrison so that they
12 could record it in their system and initiate the process of
13 cutting the check, right?

14 A. Yes. My practice, which was sort of a little unusual,
15 was I would negotiate with the plaintiff's attorney, try to
16 get to a number, get approval from Mr. Drake or Mr. Grant, and
17 then submit this form.

18 MR. SWETT: Now, can you clarify the Howard Ornstein
19 part of that form, please.

20 Q. This trial evaluation form was prepared very close in
21 time to the settlement decision, correct?

22 A. To the what?

23 Q. The settlement decision.

24 A. I don't have the paperwork in front of me, but, yes, it
25 would be within months or weeks.

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1 MR. KRISKO: Your Honor, may I briefly just
2 interrupt to register the debtors' objections to the use of
3 these documents.

4 THE COURT: All right.

5 MR. KRISKO: Thank you.

6 THE COURT: Overrule that.

7 Q. And this document reflects that the demand amount was
8 \$200,000, right?

9 A. Well, what happened, as I explained in my deposition --

10 Q. Well, first just answer the question. That's what it
11 reflects, correct?

12 A. That's the settlement number, not the demand. And that's
13 the settlement allocation by Mr. Eddins to this case. The
14 case was settled between Mr. Eddins and myself for \$400,000.

15 Q. The form that you submitted to Garrison for its data, at
16 the top of that column, it says "Demand amount." The number
17 written there is 200,000, right?

18 A. Again, it's a form. If you look at the right-hand side
19 of this form, all the information is identical over and over
20 again. This was merely to get the process started to get the
21 check. The case had been settled weeks before. Received a
22 release from Mr. Eddins' office, and that's when you find out
23 what number he allocated. And then M.C. takes that number,
24 puts it on this form and submits it.

25 Q. And that's the check they cut.

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1 A. That's the what?

2 Q. That's the amount they allocate to Mr. Ornstein in the
3 settlement.

4 A. That's the amount Mr. Eddins allocated to Ornstein. I
5 don't know how Garrison allocated it within their system. I
6 know sometimes it went in the number I settled it for.
7 Sometimes it went in the number the plaintiff's attorney
8 allocated.

9 MR. SWETT: Let's go to ACC236.

10 Q. This is -- we'll go down to the bottom. We can see that
11 this is ACC236 which was previously marked as Glaspy Exhibit
12 12. And this is email correspondence between you and
13 Mr. Eddins, correct?

14 A. Yes.

15 Q. Concerning settlements, yes?

16 A. Yes.

17 MR. SWETT: And if we turn to the page which the
18 Bates number ends in 668 -- I'm sorry, go to Bates number
19 ending 667.

20 Q. This is a letter of August 4, 2008, from Ron Eddins to
21 you, Re: compromise agreement, et cetera, and it begins by
22 saying, "Pursuant to discussions with my firm, this letter
23 will serve to confirm our agreement, that is our confidential
24 settlement agreement regarding the above-referenced cases."

25 Do you see that, sir?

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1 A. Yes. I believe this letter is from David Greenstone not
2 Eddins.

3 Q. Oh, I'm sorry.

4 A. No problem.

5 Q. We can take a look at the signature in just a minute, but
6 first let's go to page 668.

7 Do you see the 20th -- 19th case being settled here,
8 200,000 for the Howard Ornstein case. Do you see that?

9 A. I do.

10 Q. And I can confirm that on page 669, the signature is that
11 of -- on authority of David Greenstone.

12 Now, the Ornstein settlement was part of a group
13 settlement, wasn't it?

14 A. It was.

15 MR. SWETT: Let's just take a quick look at ACC331.

16 Q. As you've come to learn only recently, this is what is
17 called a major expense project approval form or an MEA in the
18 parlance of Garrison.

19 A. That's true. The first time I saw it was at my
20 deposition in June.

21 Q. All right. And this is the MEA for the group deal of
22 which Ornstein was a part, correct?

23 A. I'll take your word for it. I don't see the name in
24 there.

25 Q. Well, don't take my word for it. Take the word that's

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1 written in the upper left corner which is Garlock's
2 representation to me that Ornstein was in this group.

3 A. That's fine.

4 Q. We have no reason to dispute that, right?

5 A. No. No. I was just -- I didn't see it in the typed
6 portion.

7 Q. Fair enough. Fair enough. And in negotiating -- take it
8 down.

9 In negotiating with Simon Eddins at this stage of your
10 relationship with them, you were intent on getting group deals
11 and imposing annual caps on the amounts that would be paid to
12 that firm, correct?

13 A. Part of it. Part of it was also to lower the average.

14 Q. And then having committed them to a group deal, to work
15 on lowering the yearly average and presumably the annual cap,
16 right? That was the settlement strategy with this firm.

17 A. That was my strategy.

18 Q. Now, when we -- you testified as an expert upon
19 deposition in June of this year, correct?

20 A. Correct.

21 Q. And when you gave that testimony, you did not recall
22 anything about the strengths or weaknesses of the Ornstein
23 case, did you?

24 A. I did not. I said I had the material, I had the notes.
25 If you wanted to go through them, I was more than willing to

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1 go through them.

2 Q. You did not recall what possible trial outcomes for the
3 Ornstein case you had discussed internally with Garrison, did
4 you?

5 A. I still don't have any specific recollection of
6 specifics.

7 Q. You did say, however, that contemporaneously when you
8 were working on settlement negotiations in cases, that you
9 kept notes, making a record for your own reference at your
10 desk, of key aspects of the case, including such things as the
11 facts pertaining to exposures, correct?

12 A. Yes.

13 Q. And you also testified that it was your practice, once a
14 case had been settled, to throw those notes away.

15 A. Yes. I was settling literally fifty to a hundred cases a
16 week. The file would get pretty big pretty fast.

17 Q. And you didn't keep the notes in the case of the Ornstein
18 matter.

19 A. I did not.

20 Q. Now --

21 A. I think an accurate reflection in that case was with Ron
22 Eddins, which was unusual, was most of our dealings were
23 always in email and those have been produced.

24 Q. But your own observations regarding exposure to the
25 extent you noted them down on paper at the time when you were

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1 hondling over this case you did not retain.

2 A. I did not. A lot of that material is in the emails. If
3 there was something useful, of course, I was quoting it to Ron
4 Eddins to try to get a lower number.

5 Q. Now, during your testimony in court on August 12, you
6 called the court's attention to Mr. Ornstein's responses to
7 interrogatories, correct?

8 A. That's correct.

9 MR. SWETT: That would be ACC532, please.

10 Q. You referred the court to the answer to interrogatory
11 number 27.

12 A. Twenty-eight, I believe.

13 Q. Which is at 13, page 13, I believe. And that was the
14 query with respect to whether you've ever worked with asbestos
15 manufactured, produced, prepared, distributed or sold by any
16 other entity not named as a defendant in the lawsuit, and
17 you're supposed to identify such entity in response to that,
18 right?

19 A. That is correct.

20 Q. And then you also referred the judge to interrogatory
21 number 28 which is at page 13. And that question was, If you
22 believe you were ever exposed to asbestos other than at the
23 time or locations identified in your responses to
24 Interrogatories Numbered 26 and 27, state, and then it goes on
25 to identify some particulars in the response, including the

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1 nature of the asbestos, the trade name of the asbestos
2 product, if any, and the name of the -- and address of the
3 manufacturer, and so on, correct?

4 A. Correct.

5 Q. But you did not show the court Mr. Ornstein's response to
6 interrogatories 26 or 59. So let's go to 26. That's at pages
7 11 and 12.

8 It says, Response to -- I'm sorry. Go up to the
9 question. I guess it's on page 10.

10 "For each product, material, or compound (collectively
11 referred to as product) which you contend contains asbestos
12 allegedly manufactured, produced, prepared, distributed or
13 sold by any defendant named in this action or by its
14 predecessors, subsidiaries, subdivisions or affiliates, and
15 which you claim to have been exposed to at any time," and goes
16 on to list subparts to the interrogatory, correct?

17 A. Yes.

18 Q. And the answer given on behalf of Mr. Ornstein is on page
19 11 and 12. Rather than just limiting his response to those
20 specific matters inquired into, he referred -- his
21 interrogatory response refers to his work history sheet,
22 attached as Exhibit A, asserts that plaintiff's investigation
23 and discovery are continuing and plaintiff reserves the right
24 to amend. Do you see that?

25 A. That's what it says.

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1 Q. Then it goes on in subpart B to cross refer not only to
2 Exhibit A, the work history, but also to the standard
3 interrogatory number 59 response.

4 It says in B, "Please see plaintiff's work history sheet,
5 attached hereto as Exhibit A, for further response. Upon
6 information and belief, plaintiff states that, to the best of
7 his knowledge, the dates and locations of his exposure to
8 asbestos-containing products are set forth in his response to
9 general order standard interrogatory number 59, infra, which
10 response is incorporated by reference as if fully set forth
11 herein."

12 And it goes on to assert again that the plaintiff's
13 investigation and discovery are continuing, and again reserves
14 the right to supplement or amend.

15 MR. SWETT: And now if we go, please, to 59, which
16 is on page 32. I should say begins on page 32 and runs all
17 the way to page 35.

18 Q. This is the response to interrogatory 59, correct?

19 A. Yes.

20 Q. Begins by asserting -- referring to the work history
21 sheet attached as Exhibit A and saying, "Plaintiffs allege
22 herein that plaintiff Howard Ornstein developed malignant
23 mesothelioma as a result of exposure to asbestos from
24 defendant's asbestos, asbestos-containing products and/or
25 products designed to be used in association with asbestos

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1 products, including while in the U.S. Navy 1959 to 1963 as an
2 ETN on the USS Estes and the USS Duval County."

3 Then it goes on to say this. Pumps and valves were
4 insulated with asbestos and contained asbestos gaskets, all of
5 which were removed in plaintiff's presence that created
6 respirable asbestos laden dust. Plaintiff also saw machinists
7 and other trades removing insulation and fabricating gaskets
8 from Garlock, Sacalo and Kranite (phonetic) asbestos sheet
9 gaskets when they would hit the gaskets with a ball peen
10 hammer and cut out the gaskets with heavy shears, all of which
11 created respirable asbestos dust.

12 It goes on to say more things about gaskets and how you
13 remove them. And then it refers to Armstrong International,
14 Inc., certain steam traps.

15 And way down at the bottom he refers to Hill Brothers
16 Chemical Corporation as a supplier of asbestos fibers and as
17 an insulation contractor.

18 Do you see that, sir?

19 A. I do. And I find it strange that a plaintiff who can't
20 identify the insulation products is able to identify the fiber
21 supplier for those insulation products.

22 Q. But you don't know what the basis for that was.

23 A. It's repeated in all of Simon Eddins answers to
24 interrogatories. If you look at the Reid case, the next one,
25 they identify repeatedly fiber suppliers, T.H. Agricultural,

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1 Hill Brothers, Union Carbide, and not any of the insulation
2 manufacturers.

3 Q. You don't know what evidentiary basis the firm has for
4 that, do you?

5 A. I don't. I just find it very, very strange.

6 Q. There follows a reference on page 34 to M. Slayen and
7 Associates, Inc., as a contractor of asbestos-containing
8 insulation. Do you see that?

9 A. Yes. They're a local contractor.

10 Q. And SYD Carpenter -- Syd Carpenter Marine Contractor as a
11 decking and insulation contractor. Do you see that?

12 A. Yes, I do.

13 Q. Now, your testimony in your expert deposition was that as
14 an electrician on a navy ship, your expectation was
15 Mr. Ornstein would have been exposed to amphibole asbestos all
16 over the ship. That the whole ship would have been covered in
17 amphiboles and he would have been exposed to it. That was
18 your testimony, correct?

19 A. That sounds about right.

20 Q. And your further testimony was that those amphiboles to
21 which that electrician would have been exposed included
22 Pittsburgh-Corning Unibestos, Owens Corning Fiberboard,
23 Johns-Manville, EaglePicher, Keene, products made by those
24 companies, correct?

25 A. Correct.

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1 Q. And that's based upon your long experience in this realm
2 of affairs.

3 A. They were very standard suppliers of insulation to the
4 navy.

5 Q. As you know from your experience and from documents and
6 evidence you've gathered from previous cases, correct?

7 A. My experience. The documents don't show what went on
8 what ship.

9 Q. Now, Mr. Chaefer, is it? Chaefer, of Glaspy and Glaspy.

10 A. Yes.

11 Q. C-h-a-e-f-e-r.

12 A. Yes.

13 Q. And Ms. Walinski also of your firm?

14 A. She used to be.

15 Q. Appeared by telephone at Mr. Ornstein's deposition. Are
16 you aware of that?

17 A. I don't know where he lived. If it was far away, it was
18 probably by phone. If it was local, and very few of these
19 guys were local, it would have been in person.

20 Q. They asked, in fact, few questions during the deposition,
21 did they -- did they not? They were not active questioners.

22 A. As I just pointed out in my direct, he was asked
23 repeatedly by different attorneys about boilers. And to have
24 Mr. Chaefer then jump in and ask one more time seems to be a
25 bit redundant.

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1 Q. Mr. Chaefer, in fact, confined his questions to Garlock
2 identification, didn't he?

3 A. All the other identifications had been covered over and
4 over again. I hope and trust that he did.

5 Q. The only other manufacturer he asked about was
6 Johns-Manville whose products were pervasive on navy ships,
7 weren't they?

8 A. They seemed to be earlier in this litigation.

9 Q. In his deposition Mr. Ornstein testified that he believed
10 he was exposed to asbestos when he was cleaning on the Estes.
11 That he had to clean and dust off valves and piping that was
12 wrapped in insulation. That the insulation left physical
13 fibers on the valves which got into the air and which he
14 breathed in. Are you aware of that testimony?

15 A. I recall him testifying about wiping down surfaces,
16 something about an admirable, which seems strange, coming
17 through and inspecting on a regular basis, which seems
18 strange. But yes, that was his testimony.

19 MR. SWETT: I'm just going to refer for the record
20 to GST3831 which is the Ornstein deposition of June 2nd, 2008,
21 at pages 92, 94, 105; and at his deposition on June 3rd at
22 pages 112, 114, and 128 for his testimony about cleaning off
23 dusty pipes and valves, seeing the fibers and ingesting them
24 by breathing.

25 Q. Now, suppose that Mr. Ornstein was unable based upon

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1 personal knowledge and recollection to identify the
2 manufacturers of that pipe covering or the insulation
3 surrounding the valves. Does that seem to you to be an
4 unreasonable assumption?

5 A. It does. The way you limit it is to him. Again, the
6 discovery responses are on behalf of him and everything that
7 his attorneys, investigators, paralegals know. That is what
8 you have to do in California, as David McLain explained to
9 this court. And so it's not just limited to his knowledge.
10 It's all their knowledge. And again, they're able to identify
11 the fiber suppliers to the insulation, but not the insulation.

12 Q. Did you ever see ship records specific to the Estes or
13 the Duval County?

14 A. I personally did not.

15 Q. So let's suppose that in the absence of such records and
16 in the absence of personal knowledge or recollection of
17 Mr. Ornstein, the plaintiff's lawyer would have been left,
18 would he not, to other kinds of sources to investigate and
19 ferret out who made that insulation. That would not be
20 necessarily an easy thing to do, would it?

21 A. It seemed to be very easy throughout the '90s.

22 Q. In the '90s, plaintiffs were free to sue those insulation
23 manufacturers, correct?

24 A. Most of them.

25 Q. And to obtain discovery of them, correct?

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1 A. And again, no discovery from a manufacturer told you what
2 ship their product was on.

3 Q. Did they hide that evidence?

4 A. No. Sales of product to the navy went to general stores.
5 The navy disbursed it. No one, no manufacturer knows which
6 ship his stuff went on unless it was, as I say, a big, huge
7 turbine, in which case they would.

8 Q. Did you go to general stores and take discovery of the
9 navy supply people?

10 A. There were attempts in the early '80s to do just that and
11 it was impossible. They didn't know.

12 Q. Now, when you settled the Ornstein case, you stood down
13 from all discovery, did you not?

14 A. Whatever point we settled the case, we no longer were
15 involved in that case, that is correct.

16 Q. There was nothing in the settlement agreement that
17 obliged the Simon Eddins firm to stop working on its attempts
18 to ferret out what kinds of exposures that man had suffered,
19 isn't that so?

20 A. There was no such language in any release.

21 Q. Are you aware that Mr. Ornstein's trust claims were
22 submitted long after the settlement with Garlock?

23 A. If I recall the testimony of Mr. Simon, that was their
24 practice.

25 MR. SWETT: So let's see -- let's see a bit of

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1 Mr. Simon's testimony.

2 Mr. Walker, can you show the clip from page 177 to
3 179.

4 This is from the Simon deposition of January 4,
5 2013, page 177, line 22 to 179, line 1.

6 (Deposition excerpt of Mr. Simon as follows:)

7 "He did eventually recall the specific products we
8 have identified, the 85 Mag and the Combustion Engineering
9 boilers and now the Worthington pumps and Moore turbines. I
10 mean, these are two other products that were not identified in
11 response to interrogatories and at least you haven't tried to
12 point to these in connection with the deposition answer. But
13 here he is, he has got a memory of these particular products.

14 "Objection.

15 "Objection.

16 "Assumes facts not in evidence.

17 "And that's not a question.

18 "THE WITNESS: Yeah, I don't agree with that
19 characterization. And the reason that I'm in no way, shape,
20 or form trying to argue with you, but simply tell you what I
21 think is true, based on the information that I have, is these
22 things are temporal. We are guilty of not always having been
23 able to get all the navy records in before we can get a living
24 mesothelioma claimant's case to trial while he or she is
25 alive. It's a fact. And so sometimes the case will get

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1 resolved and we will get more information and on that basis we
2 can, in good faith, submit a trust claim, but there is nothing
3 left to supplement. The case didn't go to verdict. It
4 settled. There is really nothing further to add. There is no
5 remaining court case to supplement. That happens."

6 (End of deposition excerpt.)

7 BY MR. SWETT:

8 Q. Now, you had access to navy records in the Ornstein case,
9 didn't you?

10 A. Again, navy records do not identify insulation on any
11 ship. It identifies equipment and only the larger pieces of
12 equipment. That's all you're going to get from going to the
13 naval records.

14 Q. In fact, by September 2008, right about the time the
15 settlement decision is being made, Garlock got a report from
16 something called Rush -- Rushworth Consulting regarding the
17 amosite asbestos to which Mr. Ornstein was exposed during his
18 service in the navy, correct?

19 A. I don't recall that.

20 MR. SWETT: Let's take a look at GST0918.

21 Q. This is an excerpt from this report, Howard Ornstein
22 against Alfa Laval, Inc., Superior Court of the State of
23 California, County of Los Angeles, September 11, 2008. This,
24 by the way, the GST at the bottom of the page -- I'm sorry,
25 the GST0918 indicates that it is a Garlock trial exhibit.

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1 A. That's fine.

2 MR. SWETT: Okay. Go to page 5.

3 Q. This is a discussion of the -- of the Estes. That's one
4 of the ships Mr. Ornstein served on, correct?

5 A. That's correct.

6 Q. And the first bullet -- there are several bullets here:
7 Rigid insulation, felt insulation, cement and fabrics.

8 And the rigid insulation paragraph reads, "Rigid
9 insulation came in as blocks of different dimensions and as
10 molded half pipes of different internal diameters and
11 thicknesses to fit around pipes. The earliest and most common
12 of the materials used for this insulation was 85 percent
13 magnesia consisting of porous magnesium carbonate which is
14 inherently crumbly, strengthened with about 10 percent by
15 weight asbestos fiber. Rigid insulation for very high
16 temperature service was made from nearly pure asbestos fiber
17 mixed with a binder or diatomaceous" -- how do you say that?

18 A. Diatomaceous.

19 Q. "Diatomaceous earth mixed with asbestos fiber."

20 It goes on in this report to talk about the felt
21 insulation, the cement and the fabrics.

22 And then it says down below, "The navy specifications for
23 these materials called out, in many cases, the specific raw
24 materials to be used, the performance requirements for the
25 materials, how they were to be tested for conformance with the

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1 requirements, and how the materials were to be packaged and
2 labeled for shipment."

3 And there is further information on the next page
4 concerning the 85 percent magnesia, standard amosite
5 sectional, amosite felt, thermal insulating tape, asbestos
6 cloth, plastic insulating cement, with the explanation above.

7 "Following World War II the specification system for
8 insulation materials used in Ornstein's ships changed from
9 navy departmental specifications to military specs" -- I
10 should say specifications -- "although as noted above the
11 materials themselves changed very little."

12 Table 2 lists the key asbestos-containing machinery and
13 piping insulation materials called for on the LST insulation
14 schedules and used at the time of construction of Estes
15 through 1970, and so on and so forth.

16 Now, you had -- or Garlock had access to this report
17 dated September 11, 2008, when it was deciding whether or for
18 how much to settle the Ornstein case, correct?

19 A. That is correct. This is exactly the same information
20 that I had at trial in Treggett through Commander Delaney and
21 it was to no avail. There is, as you can see, no product. I
22 could put nothing on the verdict form. And the same result
23 would have been had.

24 Q. Are you aware, sir, that in Treggett, now that you
25 mention it, the plaintiff's expert said based on navy

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1 specifications Unibestos was probably on that submarine? Are
2 you aware of that?

3 A. I have no doubt at some point in that long trial he did
4 because that's the truth. Again, we were unable to get that
5 before the jury.

6 Q. Because the judge in the Treggett case decided that since
7 neither expert, the plaintiff's nor the defendant's, was
8 actually aboard that submarine, their testimony based upon the
9 navy specifications wasn't enough.

10 A. That's my understanding of his reasoning.

11 Q. And that has to do with the burden on the defendant to
12 make a prima facie case against a third party in order to
13 allocate liability to that party pursuant to the verdict form,
14 correct?

15 A. I'm not sure there's that burden. It goes to the weight
16 of the evidence and he felt it wasn't heavy enough.

17 Q. Coming back to the Rushworth Consulting report, page 16.
18 Dennis Rushworth adds this statement in his summary and
19 conclusions.

20 During his last two months aboard Estes, he stood fire
21 watches as the ship was being overhauled at the Long Beach
22 Naval Shipyard. Overhauls inevitably involve removal and
23 reinstallation of machinery and piping insulation, during
24 which time asbestos dust levels routinely reached tens or
25 hundreds of fibers per centimeter cubed, F/CC. During clean

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1 up of insulation debris, asbestos dust levels reached as high
2 as a thousand F/CC. Ornstein was assigned to stand fire
3 watches during this overhaul and would likely have been
4 periodically exposed to such levels during his watches. Much
5 of that dust must have been amosite asbestos fiber.

6 That's information you had in your hand when you were
7 formulating your settlement recommendation regarding Ornstein,
8 correct?

9 A. Again, this was a defense expert report. We had the same
10 information in Treggett and the result was bad.

11 Q. You can't say what affirmative efforts Garlock took to
12 ferret out the identification of manufacturers who made the
13 insulation on the ships that Ornstein served on other than
14 asking him at his deposition, right?

15 A. I don't recall if that's one of the cases where we tried
16 to track down shipmates and coworkers, but we did that.

17 Q. You don't know whether you did it in Ornstein's case?

18 A. I do not have that type of recollection.

19 Q. Okay. Let's switch gears.

20 THE COURT: Can we invite the folks back in?

21 MR. SWETT: Yes, but we'll have -- well, maybe if I
22 jump around a little bit, we can get --

23 THE COURT: Okay.

24 MR. SWETT: -- this other stuff done.

25 Let's stay with the Treggett case for a few minutes.

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1 For the record, I'm going to call up ACC795 which is
2 Garlock's appellate brief, and ask you to turn to page 26.

3 Q. Did you have anything to do with the appellate brief in
4 Treggett, Mr. Glaspy?

5 A. I did not.

6 Q. The court is familiar with this from previous occasions
7 so I'm not going to linger over it, but it says in Garlock's
8 appellate brief that Mr. Treggett testified that he had
9 massive exposure to insulation or lagging on the Marshall.

10 That's at page 26. Let's go down further.

11 Plaintiff's expert, this is also on page 26, Dr. Hammar,
12 identified Unibestos as a brand of insulation that probably
13 would have been present on the Marshall, and it gives a record
14 reference.

15 Not exactly the behavior of a plaintiff who was trying to
16 hide something, is it, Mr. Glaspy?

17 A. That wasn't the plaintiff. That was Dr. Hammar and on
18 crossing Dr. Hammar he admits, because he knows for a fact,
19 that on submarines Unibestos was the insulation of choice.

20 MR. SWETT: And so we can see his actual testimony,
21 let's go to GST5446, page 1895. Shows that this is Dr. Hammar
22 testifying on cross.

23 Go to page 1896 down at the bottom.

24 Q. He's asked about whether he's done any research regarding
25 Unibestos in the past. There's some objections and colloquy.

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1 He goes on at line 27 to say, I have not done any
2 individual research other than I know that it's composed only
3 of amosite. I didn't know what the concentration was that was
4 suggested by Mr. Chusid, who I think was talking about the
5 concentration of amosite in one of his reports, and so on.

6 He's asked a question: "Okay. Are you of the opinion,
7 based upon your review of Mr. Treggett's testimony, that he
8 was exposed to amosite fibers from Unibestos thermal
9 insulation when serving on the John Marshall between July 4 of
10 1967 and January of 1972?"

11 There are various objections.

12 Overruled.

13 Go on to the next page.

14 "What I know of Bremerton that that has been a type of
15 asbestos that's been used on ships. I don't know if that was
16 used on the USS John Marshall or not."

17 Further questioning. "Do you know who manufactured
18 Unibestos thermal insulation during the time period July of
19 '67 through January of '72?

20 "Well, the only name that comes to mind is
21 Pittsburgh-Corning."

22 So that was the record in the Treggett case regarding the
23 plaintiff's expert's view of Unibestos as it pertained to
24 Mr. Treggett's exposures, correct?

25 A. Dr. Hammar says he does not know if that was on that

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1 ship.

2 MR. SWETT: If we go to page 29.

3 Is this 29? I'm sorry, I've got the wrong
4 reference.

5 Q. Let's talk for a minute about costs. You were assiduous,
6 were you not, in keeping the costs of litigation down as much
7 as you could?

8 A. Not sure the exact definition of assiduous, but, yes, I
9 was concerned about costs for every one of my clients.

10 Q. You tried hard to keep the costs low.

11 A. I tried the best I could.

12 Q. You kept your rates down.

13 A. I did.

14 Q. You were aware that magnifying the costs of defense would
15 make it easier for the plaintiffs in some sense.

16 A. I don't know how it would make it easier for the
17 plaintiffs.

18 Q. You thought it would give them settlement leverage.

19 A. Well, if they knew it cost me a million dollars to defend
20 a case, then I suspect it would raise their settlement
21 demands.

22 Q. You hired experts as late as you could in the process.

23 A. I did.

24 Q. You began your own trial preparation just weeks,
25 sometimes days before trial, in order to keep the costs down.

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1 A. Well, that and the fact I tried so many cases, there
2 wasn't a lot of prep I had to do.

3 Q. And you're not the only experienced asbestos lawyer on
4 Garlock's team, were you?

5 A. Far from it.

6 Q. But you don't know the actual costs of defense in any of
7 the cases that the debtors' lawyers here showed you that day
8 before your fact deposition, do you?

9 A. No, that's not something I kept track of. I went on to
10 the next case and the next case.

11 Q. Now, I want to direct your attention to the middle 2000s
12 at a point when Garlock was foreseeing that it would soon --
13 in effect, had used up or allocated for use all of its
14 available insurance proceeds.

15 Do you have in mind the period I'm talking about?

16 A. 2005, is that what you're saying?

17 Q. That's about it.

18 A. All right.

19 Q. As that situation loomed, Garlock's financial condition
20 became a factor in settlement negotiations that you conducted,
21 didn't it?

22 A. Well, it did in my mind. I also explained to firms like
23 Waters and Kraus that the biggest issue I had was cash flow
24 year to year. We had to meet budgets like all corporate
25 entities do and that therefore I needed some certainty as to

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1 amount per year. And that's where the cap idea came up.

2 Q. You're a principal counter party in negotiations with
3 Waters and Kraus, with Mark Iola?

4 A. That is correct.

5 MR. SWETT: Let's see what he had to say on this
6 subject.

7 Play the Iola testimony, please.

8 (Deposition excerpt of Mr. Iola as follows:)

9 "Do you recall a discussion or a meeting in which
10 Mr. Hennessy was involved in some time period shortly before
11 the bankruptcy case?

12 "Answer: As you have asked your question, I'm not
13 sure. I know that after David Glaspy got involved in our
14 practice in late 2005, around the time of the Treggett
15 verdict, up until the time that they filed for bankruptcy,
16 there was an occasion -- perhaps even more than one occasion,
17 although I don't recall.

18 "From the beginning, David came to me after the
19 Treggett matter and wanted to talk with me about global
20 problems that Garlock was having in the marketplace, wanted to
21 discuss their declining insurance piece and the cash flow
22 problems that Garlock saw themselves coming in contact with in
23 the future.

24 "And he was having those discussions with me because
25 he wanted me to work with him to put together a process that

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1 would work for him and would work for my clients, and I
2 engaged in that discussion with Mr. Glaspy.

3 "In the process of that, we asked for appropriate
4 due diligence material so that I could evaluate fairly what
5 the position of Garlock was, the nature of their claim
6 history, the nature of their claim payments, so that I could
7 accurately and fairly advise Waters and Kraus and my
8 individual clients as to what I thought was appropriate under
9 the conditions that I understood them. And because I trusted
10 Mr. Glaspy, we didn't do it in a formal way.

11 "Question: Do you recall that the topic of trust
12 claims came up during your conversations with Mr. Glaspy and
13 Mr. Hennessy?

14 "Answer: I don't have a recollection of it coming
15 up. I would be very surprised if it came up in discussions
16 with me, because it would have nothing to do with what I and
17 David Glaspy and Tim Hennessy were trying to do. I was trying
18 to accommodate Garlock's very unique and difficult problem of
19 keeping them afloat and in the tort system and also
20 maintaining the integrity of doing the right thing for my
21 clients.

22 "In essence, Garlock was coming to me and asking me
23 to help them with their problem.

24 "Question: What specifically did -- and when you
25 say Garlock, you're talking about Mr. Glaspy?

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1 "Answer: Yes, sir.

2 "Question: And you're saying he asked you to help
3 him with his problem?

4 "Answer: Yes, sir.

5 "Question: Okay. And what specifically did he say
6 in that context?

7 "Answer: He was running out of money.

8 "Question: He said he was running out of money?

9 "Answer: The company.

10 "Question: Okay. What was your response to that
11 statement?

12 "Answer: That's a problem.

13 "Question: And what action did you take in response
14 to that?

15 "Answer: Well, we took a lot of action, Garland. I
16 mean, we exchanged a tremendous amount of information about
17 the inventory of cases that I had at the time.

18 "They provided me a lot of information for me to
19 better understand the nature of what insurance they had in
20 place, and what the declining revenue stream from that
21 insurance would be, and information about the underlying
22 company and what monies that it was throwing off that it could
23 push towards this problem, and an understanding of what they
24 were paying in the marketplace to everyone, including my firm
25 so that I could understand the scope of his problem. And it's

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1 in those contexts that we came up with a three year agreement
2 that I think you've seen that we negotiated."

3 (End of deposition excerpt.)

4 BY MR. SWETT:

5 Q. Do you remember the back and forth of that dialogue that
6 Mr. Iola described?

7 A. Well, I was never involved with Mr. Iola and
8 Mr. Hennessy. Every time I met with Mr. Iola after the first
9 time, which was -- Mr. Grant was present, was just myself and
10 Mr. Iola.

11 Q. Do you remember the substance of the discussions that
12 he's recounting there?

13 A. Yes. I might phrase it a little differently. But as I
14 said, cash flow was an item.

15 MR. SWETT: For the record, the Iola testimony that
16 we've played begins at page 48, line 18, runs to page 49, line
17 24, and then picks up on page 52, line 12 to 54, line 8.

18 Q. I'd like to call your attention to the late stages of
19 Garlock's life outside of bankruptcy, 2009, 2010, and to your
20 dealings with the Kazan firm.

21 Do you remember that in the fall of 2009 the Kazan firm
22 opened negotiations on another group of mesothelioma claims?

23 A. I received a letter with a group of names.

24 MR. SWETT: That would be ACC888, I think. Let's
25 take look.

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1 Q. This is a letter of October 19, 2009, addressed to you
2 from the Kazan firm.

3 Scroll through it so that Mr. Glaspy can see.

4 There's a list of cases, each of which gets a brief
5 description, correct?

6 A. I'm sorry, this is October 2009?

7 Q. Yes.

8 A. I have it here.

9 Q. Signed by Matthew Thiel.

10 A. Yes.

11 MR. SWETT: Go up a little bit.

12 Q. I want to point out -- I want to point out the Louis
13 Shaieb case, S-h-a-i-e-b, described on page 4 of the letter as
14 follows. "Lou Shaieb was diagnosed with mesothelioma at the
15 age of 87. He worked for Oliver Rubber and Tire from 1949 to
16 1959 and then for Rubber Engineering and Development Company
17 (Redco) from 1959 to 1986. At each site Mr. Shaieb was a
18 press operator and later a foreman. Our investigation reveals
19 that Garlock asbestos sheet gasket material was used at Redco.
20 Mr. Shaieb recalls that the sheet gasket material was used
21 often and that the shop was always dusty."

22 Do you see that, sir?

23 A. I do.

24 Q. Now, negotiations over settlement of the cases presented
25 in this letter didn't get very far, did they?

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1 A. Well, it did not. The problem was this case, they only
2 had Garlock as a defendant. Sort of like the Phillips case
3 which has been discussed previously in Texas, I believe.

4 Anyhow, so we were faced with this case and a small group
5 of other cases. And it got to the point where I said, well,
6 obviously, you need money on this case and you can forego
7 money on some of the other cases because you're getting it
8 from other defendants. And we ultimately reached a deal to
9 settle this one case for an abnormally high number.

10 Q. That would be \$850,000.

11 A. That's correct.

12 Q. And that claim was paid in April of 2010.

13 A. It took some time. I don't know when it was paid, but it
14 was paid the following year.

15 MR. SWETT: Let's take a look at ACC883.

16 Q. There was a problem getting the money out of the
17 insurance company, wasn't there?

18 A. Well, I suspect I made some comment like that. I said I
19 was trying to obviously keep Mr. McLain at bay while the funds
20 came from my client. I don't know what was going on. I may
21 have said things that technically weren't true, but we were
22 trying to get this deal done. It was a large number. It was
23 going to take a little time. Obviously, more than normal.

24 Q. Here's the email exchange of December 9 where Mr. McLain
25 is telling you that after discussions with his client and

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1 partners and considering Garlock's financial position and our
2 long-term relationship, we are prepared to compromise off of
3 our bottom line number. We can do one of two things.
4 \$850,000 payable in January 2010 or 750,000 payable in
5 January 2010 and 200,000 payable in January 2011. This is an
6 incredible deal, and so on and so forth.

7 And then you respond above, "Am driving back, actually
8 the wife is, from a really good wine dinner pairing in
9 Saratoga. Will pass it on with my spin and be back in touch.
10 Thanks so much for working with us. I wish things were
11 better. It has been a long run. I never thought it would
12 last this long."

13 Do you see that, sir?

14 A. I do. I'm referring to he and I working together for 25
15 years. I thought the litigation was going to last 5 years.

16 Q. You weren't talking about what had by then become
17 apparent which was that Garlock was going to go into
18 bankruptcy?

19 A. No. We -- McLain and I became very close.

20 Q. "I wish things were better." What is that about?

21 A. He's got a client that is dying. He's got one defendant.
22 He swore he needed a couple million dollars. He agreed to
23 take 850,000. It's not what he wanted. It's not what I
24 wanted.

25 Q. "It's been a long run. I never thought it would last

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1 this long."

2 Let's talk a little bit about your opinion concerning
3 trends.

4 You acknowledged upon deposition, did you not, that you
5 could only guess and conjecture as to what was behind the
6 decline in the number of filings that you were aware of in
7 California? Do you remember that testimony?

8 A. I do. It was my fact deposition. As I pointed out, it
9 dawned on me real quickly that that was opinion testimony.

10 MR. SWETT: Well, let's just take a look at the
11 January deposition at pages 248 and 49.

12 Can you clarify on the left side, please.

13 Q. Starting at -- starting at page 5 -- line 5. Question
14 was, "Have you perceived any major changes in the tort system
15 as it pertains to asbestos defendants since Garlock filed for
16 bankruptcy?"

17 There was an objection based upon attorney mental
18 impressions.

19 You continued at line 11, "In my jurisdiction I've seen a
20 major decrease in the filing of cases in the state of
21 California. That's what I've seen."

22 Mr. Guy asked, "Is that all cases or just malignant
23 cases?"

24 You answer, "Asbestos cases. And the only attorney
25 filing asbestos cases is Mr. Radon" -- and really, you said

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1 Drayton, didn't you?

2 A. I did.

3 Q. D-r-a-y-t-o-n?

4 A. Yes.

5 Q. And you're referring there to non-malignant cases?

6 A. Correct.

7 Q. "And his filings have decreased dramatically.

8 "Question: And do you have an explanation for that
9 decrease?"

10 Another objection based on attorney mental impressions.

11 The witness at line 1 on the next page: "I can guess and
12 conjecture as well as anybody. I don't have a data bank what
13 it was or wasn't. It's just a guess."

14 That was your testimony, correct?

15 A. That was. In other words, it wasn't factual.

16 Q. Now, the Berry and Berry website collects information
17 only on the Northern California jurisdictions, doesn't it?

18 A. That's correct. San Francisco and Alameda Counties.

19 Q. So it ignores Los Angeles, right?

20 A. It does.

21 Q. Now, one of the significant developments in recent years
22 is the emergence of Los Angeles as a significant venue for
23 asbestos litigation, correct?

24 A. I think really the change was the introduction of Texas
25 lawyers into Los Angeles. There were always cases down there.

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1 It's just they started being prosecuted more seriously.

2 Q. It became a hot venue, didn't it?

3 A. Compared to what it was. It was a very sleepy venue
4 before that.

5 Q. And when you speak of the influx of Texas firms into Los
6 Angeles, you're talking about Baron & Budd, the Lanier firm,
7 Waters and Kraus, Simon Eddins --

8 A. That's --

9 Q. -- and some others?

10 A. That's about it. There may be one -- I can't think of
11 any others.

12 Q. And there was a more recent entry into the Los Angeles
13 market, was there not, consisting of firms from New York?

14 A. The Weitz and Luxenberg firm has had an office in LA on
15 and off for many years. They'd open, last a year or two and
16 close it and vice versa. They have an office now, and so does
17 Napa Leeburn, another New York law firm.

18 Q. I'm sorry, I couldn't hear you.

19 A. Napa Leeburn, another New York law firm.

20 Q. Weitz and Luxenberg and Napa Leeburn are now active in
21 Los Angeles?

22 A. Yes.

23 Q. Is it correct, sir, that also in recent times, the state
24 courts in Alameda County and San Francisco County have begun
25 to transfer venue within the state in asbestos cases from time

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1 to time?

2 A. It's limited, but more so than happened ten years ago.

3 Q. The Kazan firm has also begun to file some cases in Los
4 Angeles, has it not?

5 A. The only case I was aware of was the Smith case that we
6 tried.

7 Q. Have you heard of the Odell case?

8 A. I have not.

9 MR. SWETT: Your Honor, this -- if it's convenient
10 to you, this would be a good moment for a break and then we
11 can let people back in.

12 THE COURT: Okay. Let's do that. Let's take a ten
13 minute break and then come back at ten after. And let's try
14 to wind up with this witness if we can.

15 (Brief recess at 11:00 a.m.)

16 (End of sealed proceedings.)

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1 MR. SWETT: Shall I resume?

2 THE COURT: Yes.

3 DAVID MICHAEL GLASPY

4 CROSS EXAMINATION (Cont'd.)

5 BY MR. SWETT:

6 Q. Mr. Glaspy, you acknowledge that in California, a
7 defendant must make out a prima facie case against a third
8 party before the court will put that third party on a verdict
9 sheet in an asbestos case, correct?

10 A. Not necessarily. It depends on the judge.

11 Q. Let's see your -- I'm pulling out your March 2011
12 testimony to this court at page 97. I'm going to read from
13 lines 7 to 9.

14 I'm sorry, I'll back up. Give this a little context on
15 page 96, line 23.

16 "Question: You are familiar with the practices of
17 California courts on the issue of what entities can be put on
18 the verdict sheet as potentially responsible for the
19 plaintiff's injuries?

20 "Answer: Yes, but it's not uniform. It depends on the
21 judge.

22 "Question: Have you been in cases in California where
23 you were able to persuade the particular judge to allow you to
24 put on the verdict sheet specific non-Garlock entities who
25 made asbestos-containing products so that you could argue to

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1 the jury that they should apportion fault to these entities?

2 "Answer: Yes. However, it is your burden of proof and
3 they don't go on the form until the judge concludes you have
4 put on a prima facie case of liability against that entity."

5 Those were the questions and answers in this court back
6 in 2011, correct?

7 A. Correct. That's what I said: It's up to the judge.

8 Q. You also said it's the defendant's burden to put on a
9 prima facie case to satisfy the judge, correct?

10 A. Right. And my point is what satisfies that burden is up
11 to the judge.

12 Q. Sometimes you can put the navy generically and make it --
13 attempt to make it responsible for all of the products whether
14 or not identified to a specific manufacturer on a given ship,
15 correct?

16 A. In every navy case I tried, I tried to get the navy on
17 there as the employer of the plaintiff and have fault of the
18 employer, yes.

19 Q. And you succeeded in doing that in the Treggett case,
20 correct?

21 A. I did.

22 Q. Now, leaving aside the navy as the employer, focusing on
23 third party manufacturers, your own reasonable belief, based
24 on long experience in a lot of cases, that a particular
25 product, say Unibestos, was on a given ship during a given

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1 time, is not enough to make out your prima facie case against
2 the third party and get it on the verdict sheet, is it?

3 A. My belief it's not enough for anything in any case.

4 Q. Even your client's reasonable belief without evidence is
5 not going to get that third party on the verdict sheet, is it?

6 A. Depends on -- you talking about the specifics of a case
7 like this? Because in many cases my clients do testify about
8 their beliefs.

9 Q. No, I'm talking about satisfying as a legal matter the
10 prima facie burden to get the third party on the verdict form.
11 It takes evidence, doesn't it?

12 A. It always takes evidence.

13 Q. And the defendant's burden to persuade the jury to
14 allocate liability to that third person once it's on the
15 verdict sheet is to make out every element of a cause of
16 action, correct?

17 A. Again, it's up to the judge. Some judges are very
18 lenient and easy on it and some are very -- more difficult on
19 it. It really depends on the judge.

20 Q. Under the leading authorities at the appellate level in
21 California, do you agree with me under *Skypes* that you've got
22 to make out every element of a cause of action?

23 A. You're talking about the *Sparks* case --

24 Q. *Sparks*.

25 A. -- that Mr. McLain referred to. And in fact, no, that's

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1 not what the case says.

2 And in fact, a case just came down in the last week or
3 two, the *Kearney* case, which said -- in that case the jury
4 awarded 80 percent to the navy and the plaintiff appealed.
5 And the appellate court said that's the province of the jury.

6 Q. Because ultimately it's a question of fact.

7 A. It is.

8 Q. But you've got to make out the cause of action, correct?

9 A. Again, the cause of action is evidence about what
10 products are on that ship.

11 Q. Cause of action is personal injury tort for wrongful
12 death, isn't it? Failure to warn, defective product. Those
13 are the causes of action, aren't they?

14 A. Yes. Failure to warn. So the only missing element is
15 you ask the plaintiff did he ever receive a warning. They
16 always say at depo they never did. And at trial they never
17 did. And now you have made your case out. As long as you can
18 identify a product, you're done.

19 Q. You've got to show duty to warn. You've got to show
20 failure to warn. You've got to show resulting harm and
21 pecuniary loss, don't you?

22 A. The duty to warn exists. All you have to show is the
23 plaintiff never received a warning. And then the name of that
24 company goes on the verdict form.

25 Q. And of course, you must prove exposure, correct?

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1 A. That was my point. That's what I started with.

2 Q. You must prove exposure in a nontrivial manner sufficient
3 to persuade the trier of fact that the exposure contributed to
4 the risk of getting the disease, correct?

5 A. Yes.

6 Q. And that's by the same causation standard that the
7 plaintiff would have to meet in its case against your
8 defendant, correct?

9 A. Correct.

10 Q. Plus you've also got to give the jury a rational basis to
11 assign percentages of liability to the different entities on
12 the verdict sheet, correct?

13 A. No, that's what the *Kearney* case says is it's up to the
14 province of the jury. It's a factual matter.

15 Q. You regard the jury as -- strike that.

16 You have made no study, have you, of the showings
17 required to be made by a claimant when pursuing a claim in the
18 bankruptcy context.

19 A. I do not profess to be an expert in any bankruptcy
20 proceeding.

21 Q. You have not made any analysis of what is required of a
22 claimant to qualify his claim for payment by an asbestos
23 settlement trust, have you?

24 A. I have not.

25 Q. There was a time when you routinely subpoenaed trust

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1 claims in substantial cases, but that was a long time ago,
2 wasn't it?

3 A. After the bankruptcy wave in the early 2000s, we began to
4 subpoena in specific cases trust claim forms, and we were
5 wholly unsuccessful. The plaintiffs' attorneys in California
6 would object because we would have to go into court to get an
7 out-of-state commission so we can go to the state where the
8 trust exists, have the attorney there issue -- have a subpoena
9 issued and get the records. The judges in California
10 generally bought the plaintiffs' attorneys' arguments that
11 these documents were all settlement documents and therefore
12 privileged and did not allow us to get them.

13 Q. Are you aware of the *Volkswagen* decision decided by an
14 intermediate appellate court in California in 2006 holding
15 that the trust claims and supporting materials were
16 discoverable?

17 A. I am. I am talking about the early 2000s.

18 Q. You never saw a trust distribution procedure, a document,
19 before your involvement in this case, did you?

20 A. That is correct.

21 Q. You never saw -- strike that.

22 You now know that asbestos trusts routinely publish their
23 trust distribution procedures, correct?

24 A. I have no understanding what they do.

25 Q. Well, take it from me those are public documents. You

DAVID GLASPY - CROSS

1 can go on the web and get them. No one has told you that?

2 A. Talking about the document that's --

3 Q. The trust distribution procedures.

4 A. -- about 50 pages long, yeah.

5 Q. The ones that tell you right in black and white what on
6 average the trust will pay a qualified mesothelioma claim that
7 goes through expedited review. You're aware that they do
8 that?

9 A. I am aware that that is in that document.

10 Q. You've learned that in this case.

11 A. That is correct.

12 Q. You know that they publish average values, their targets
13 for what they will pay all qualified mesothelioma claims
14 whether upon expedited review or individual review. Do you
15 know that?

16 A. I've seen numbers in various publications.

17 Q. And the maximum value above which they can't pay under
18 their procedures a qualified mesothelioma claim, are you aware
19 of that?

20 A. I'm not.

21 Q. I've been using the term pay. What I really meant is the
22 scheduled values, the liquidated amounts, the values they
23 assign to those claims.

24 But you're also aware, aren't you, that they publish the
25 payment percentages that the trust will operate on the basis

DAVID GLASPY - CROSS

1 of?

2 A. That's the number I've seen change in various
3 publications. Numbers seem to keep changing. I'm not sure
4 what they are.

5 Q. That means the percentage of the liquidated amount of a
6 qualified claim that the trust will pay. You're aware that
7 that's public information.

8 A. I don't know what you mean by public information. I -- I
9 don't know where you regularly obtain it, if you have to go to
10 the trust to get it, I don't know.

11 Q. You go on the web to the trust website. You call up the
12 trust distribution procedures and you see the payment
13 percentages published right there in black and white for all
14 the world to see. You're not aware of that?

15 A. I don't spend a lot of time on computers. I have people
16 that do that and I'm sure that's how they do it. I just can't
17 answer to it.

18 Q. In all your years in practice, you've never paid any
19 attention to the Manville TDP?

20 A. No. In the early '80s and in the '90s, it had no effect
21 on my clients.

22 Q. You were in court when Mr. Magee testified on cross.

23 A. I was here for part of his testimony.

24 Q. You were aware of the following testimony which is at
25 page 3245 of the trial transcript, commencing at line 10.

DAVID GLASPY - CROSS

1 If you can clarify that, please.

2 I asked Mr. Magee the following question: "Did you ask
3 your Robinson Bradshaw lawyers to tell the defense team to pay
4 attention to the TDPs and payment schedules and -- in order to
5 form approximate views of what contributions could be expected
6 from those sources?"

7 There was an objection that was overruled.

8 "Question: Did you do that?

9 "Answer: We did."

10 And he goes on to say, "We had -- Mr. Grant and I
11 definitely advised our team that the bankruptcies were
12 something we should focus on. And we did have a meeting
13 where -- with our regional counsel where Mr. Cassada appeared
14 to talk about that.

15 "When was that?

16 "I can't remember the date. I suspect it was around
17 2007, 2008."

18 You heard that testimony?

19 A. I did.

20 Q. Did you attend such a meeting?

21 A. I did. And I believe it was more likely 2008. It was
22 very late in the process.

23 Q. Thereafter, you didn't pay any attention to the trust
24 distribution procedures?

25 A. I paid attention to the information about what money was

DAVID GLASPY - CROSS

1 being paid out so I could use it in my settlement
2 negotiations. I didn't care about a trust distribution
3 procedure document. I cared about how much each trust was
4 going to be paying that plaintiff.

5 Q. You never saw a bankruptcy ballot before your involvement
6 as an expert in this case, did you?

7 A. I didn't even know they existed.

8 Q. So you never saw any defendant, let alone Garlock, try to
9 use such a ballot in a tort suit.

10 A. No, I have not.

11 Q. You have no precedent to cite saying whether or not such
12 a ballot is admissible as exposure evidence in such -- in an
13 asbestos action.

14 A. No. As I testified at deposition, I have been trying to
15 think about how I could use it, but I so far have not seen it
16 used and I have not come up with a way that would make it
17 absolutely admissible.

18 MR. SWETT: Thank you, Mr. Glaspy.

19 THE COURT: Mr. Guy.

20 Let Mr. Guy go first.

21 MR. GUY: Your Honor, may I cross examine the
22 witness from here?

23 THE COURT: Yes.

24 CROSS EXAMINATION

25 BY MR. GUY:

DAVID GLASPY - CROSS

1 Q. Mr. Glaspy, my name is Jonathan Guy. We've met before.

2 A. Yes, we have. Several times.

3 Q. And I always come in at the end and I always have little
4 time, but I hope to get you off quickly, as usual.

5 You've represented Garlock for about 30 years, correct?

6 A. Thirty years almost exactly.

7 Q. And you've always been a zealous advocate for Garlock.

8 A. As best I could.

9 Q. And you've billed a significant amount of money to
10 Garlock, correct?

11 A. I suspect they thought it was significant.

12 Q. I'm sure every penny was worth it.

13 A. Obviously not in the Treggett case.

14 Q. But millions of dollars, correct?

15 A. Over 30 years, yes, I would -- I would assume so.

16 Q. Now, you've settled thousands and thousands of cases for
17 Garlock, correct?

18 A. Correct.

19 Q. And we're focusing today on the mesothelioma case, but
20 you've focused -- you've settled hundreds of mesothelioma
21 cases for Garlock.

22 A. Thousands.

23 Q. Thousands. Did you consider trial risks when you settled
24 those cases?

25 A. Always.

DAVID GLASPY - CROSS

1 Q. And let's quickly go through some of the factors, and if
2 there are others you can add them.

3 But in considering trial risk, you looked at whether the
4 plaintiff was alive or dead, correct?

5 A. Yeah. That's not as large as some people think, but it's
6 a factor.

7 Q. A factor. And you considered the plaintiff's occupation.

8 A. Yes.

9 Q. Dependents.

10 A. If -- if they are -- I mean, children if they are still
11 in need of financial support, yes.

12 Q. Age of the plaintiff.

13 A. Absolutely.

14 Q. And obviously, in every instance you were looking for
15 identification of a Garlock product, exposure to a Garlock
16 product, correct?

17 A. I would not pay a claim or recommend it be settled unless
18 there was such exposure.

19 Q. And you also considered the exposures to other products
20 that were relevant for individual plaintiffs, correct?

21 A. Correct.

22 Q. And clearly as Garlock's lawyer, you considered all the
23 legal defenses that were available to Garlock.

24 A. I'm sure I did.

25 Q. Would you agree with me, sir, that when you were settling

DAVID GLASPY - CROSS

1 cases, you were evaluating the strengths and weaknesses of
2 individual cases?

3 A. I was, as well as the cost to defend those cases.

4 Q. Now, when you settled cases, you resolved Garlock's
5 liability, correct?

6 A. I agreed with the plaintiff's attorney to settle all the
7 claims of his plaintiff, both present and future claims, for a
8 set amount of money and get release of Garlock and all of its
9 related entities. And that's all I did.

10 Q. So in return for the settlement payment, you got a
11 release for future liability against Garlock, correct?

12 A. Present and future. In other words, PI case and the
13 future wrongful death case.

14 Q. Now, obviously, defense costs were a factor as well,
15 correct?

16 A. In a lot of cases, the major factor.

17 Q. Now, would you agree with me that you always paid the
18 cheapest price possible?

19 A. Well, I certainly hope so.

20 Q. Now, nearly all the cases settled, correct? Few of them
21 went to trial, but nearly all of them settled.

22 A. That's true in the entire tort system in every type of
23 case I've handled.

24 Q. When I say cases, I mean mesothelioma cases.

25 Now, in your settlement negotiations, I think you told me

DAVID GLASPY - CROSS

1 before, the existence of trusts and trust claims was just
2 never part of the negotiation; is that accurate?

3 A. That is not accurate.

4 MR. GUY: Okay. Let's pull up 257 of the June 25,
5 2013 deposition.

6 Q. I was asking you about the settlement agreements. So
7 let's step back a little bit.

8 In the settlement agreement, you never had any
9 representation about trusts, correct?

10 A. The release?

11 Q. In the settlement agreement itself.

12 A. Okay. We do releases. I don't know what you're
13 referring to settlement agreement. I know with Waters and
14 Kraus, which you have here on the screen, there was a letter
15 from Mark Iola which was an agreement for going three years
16 and a settlement and what have you. So that's a settlement
17 agreement.

18 I'm trying to figure out what you're talking about. The
19 release or this letter with Mark Iola?

20 Q. The document that you sign and the plaintiff signs which
21 resolves the claim, sets forth the amount of the money and any
22 other terms that are relevant in connection with the release.
23 What is it that you call that?

24 A. There is no such document. I've never signed a document.

25 A release is signed by the plaintiff releasing their rights,

DAVID GLASPY - CROSS

1 releasing my client from any future suits. I don't sign that
2 document.

3 Q. So that is the only document you have in connection with
4 settlements?

5 A. That is correct.

6 Q. All right. So you call that a release?

7 A. It is a release. It is a release of all liabilities.

8 Q. Let's just stick with that phrase because it's your
9 phrase.

10 In the releases of which you were involved in negotiating
11 thousands of mesothelioma claims against Garlock, did you ever
12 put in any one of those releases any language, any
13 representations about trust claims?

14 A. No.

15 Q. And I think you said that was never part of the
16 negotiation.

17 MR. GUY: Will you highlight the very bottom of
18 that.

19 THE WITNESS: You're talking about the agreement
20 with Waters and Kraus. It's not part of that settlement
21 agreement. We had negotiations and it was -- as Iola, he was
22 just on the screen talking about the cash flow and the
23 problems. We talked about everything.

24 Q. So when you settle cases, you did talk about trust
25 claims.

DAVID GLASPY - CROSS

1 A. Talked about the fact -- primarily from his point of
2 view, that there was less money there. There is less money.
3 We're not getting any money from the trust claims. Oh, yes,
4 you are. You're getting this kind of money from the trust
5 claims. That was the constant negotiation, the constant issue
6 that was brought up. They would deny they're receiving money
7 from the trust. I would say the information I have is they're
8 receiving this much money from the trust.

9 Q. And you would agree that's something the parties consider
10 when they settle these cases in fixed amounts to pay for these
11 cases, correct?

12 A. Absolutely.

13 Q. Okay. Now, I want to turn to a document that you went
14 through on your direct testimony which was the settlement that
15 you entered into with the Kazan firm in 2005. Do you remember
16 that, sir?

17 A. I do. I have them here.

18 Q. Do you have it handy?

19 MR. GUY: It's GST7233, if counsel would pull that
20 up?

21 THE WITNESS: Do you have the date?

22 Q. Yes. It's March 12, 2004.

23 A. Thank you.

24 Q. Do you remember that, sir?

25 A. I do.

DAVID GLASPY - CROSS

1 Q. And then if we go to the very back of the document,
2 there's a letter with an ultimate page that's dated May 3,
3 2005. Do you see that, sir?

4 A. I do.

5 Q. Now, that doesn't have a signature from you on it, but do
6 you recall actually signing this document at some point?

7 A. I never signed this document.

8 Q. But does this document reflect the agreement that you
9 entered into with the Kazan firm?

10 A. That is a letter confirming that we settled a bunch of
11 cases. It doesn't contain all the terms or any of that. It's
12 just -- yeah, he sent me this letter and I don't disagree with
13 the letter.

14 Q. And the parties followed up on this settlement, correct?

15 A. That's my understanding, that all these cases have been
16 paid.

17 Q. Right. So if we go to the next page. That lists the
18 amounts that were paid for all those mesothelioma cases. Do
19 you see that, sir?

20 A. I do.

21 Q. So this is 2005, correct?

22 A. Yes. May.

23 Q. And did every one of these cases have identification to a
24 Garlock product, exposure to a Garlock product?

25 A. My recollection is yes.

DAVID GLASPY - CROSS

1 Q. In every one of these cases you considered the things
2 that we have talked about, correct? The factors.

3 A. I'm sure I did. I don't have that detailed recollection
4 going back to 2004, 2005.

5 Q. Now, when you were deposed, you told me that there was a
6 problem with two law firms in terms of disclosure of trust
7 claims, correct? The Waters and Kraus firm and the Simon
8 Eddins firm.

9 A. That's the group of cases we discussed, that is correct.
10 That's what I saw in that box of documents.

11 Q. And we say -- we've heard a lot about that and I don't
12 want to get into that. But you also agreed with me that many
13 of the law firms in California readily acknowledged exposure
14 to bankrupt entities, correct?

15 A. There are firms that, as I testified, never changed and
16 then there were firms in between.

17 Q. Now, these values are in 2004, entered into freely by
18 Garlock for mesothelioma cases with the Kazan firm. And
19 they're pretty significant amounts, correct? They range
20 from -- if we just can show them -- 25,000 all the way on up
21 to, I think the highest one is \$250,000.

22 A. Yes. The average was 160,000.

23 Q. If you could have settled every one of these cases for an
24 average amount of \$38,000, would you have considered that to
25 be a great result for Garlock?

DAVID GLASPY - CROSS

1 A. If I could have settled them for any less money than I
2 did, it would have been a much better result for Garlock.

3 Q. \$38,000 average settlement amount would be significantly
4 less than what you paid here in 2005, correct?

5 A. That's pure math.

6 Q. Now, you testified before, I think, that in terms of your
7 defense costs that you were aware of in the post-2000 time
8 frame, nearly all of that was taken up by meso cases.

9 A. Yes.

10 Q. So there was minimal, if any at all, defense costs
11 associated with non-malignant cases?

12 A. We were settling those for \$500 a case. It didn't make
13 any sense to even file an answer.

14 Q. So to the extent we were trying to determine what the
15 average amount that the debtor spent on defense costs, would
16 it be fair, at least from your perspective, to focus on the
17 number of mesothelioma claims rather than the other claims?

18 A. I have no idea. You are talking about data that I have
19 no knowledge of. I'm sure with some of the huge deals that
20 were done in parts of the country with the -- as we've heard
21 about, the traveling vans and all that, that there was
22 probably a lot of time and money spent. I have no
23 understanding of that. In California it was very limited.

24 Q. But nearly all the money you were spending was on meso
25 cases.

DAVID GLASPY - CROSS

1 A. My personal bills, my time was spent on meso cases
2 primarily.

3 MR. GUY: Bear with me a second, Mr. Glaspy.

4 THE WITNESS: I've got no where to go.

5 (Pause.)

6 MR. GUY: We're done. Thank you, sir.

7 THE WITNESS: Thank you.

8 THE COURT: Mr. Krisko.

9 MR. KRISKO: Thank you, Your Honor.

10 MR. KRISKO: We're going to talk about some of the
11 cases that Mr. Swett brought up.

12 THE COURT: All right. We'll have to ask the --
13 everybody that hasn't signed the agreement leave again. I
14 believe this will be very short.

15 (Sealed proceedings.)
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DAVID GLASPY - REDIRECT

1 DAVID MICHAEL GLASPY

2 REDIRECT EXAMINATION

3 BY MR. KRISKO:

4 Q. All right. Mr. Glaspy, Mr. Swett had asked you about the
5 Treggett case and he called your attention to some testimony
6 from Dr. Hammar who was one of the plaintiff's experts in that
7 case. Do you remember that?

8 A. Yes. He's a pathologist.

9 Q. Okay. And I wanted to -- Mr. Swett did not read the
10 entirety of the testimony that was in the passage that he
11 showed you and I wanted an opportunity to ask you about the
12 rest of that testimony. If you could focus on -- okay.

13 If you'll recall, Mr. Swett pointed out that Dr. Hammar
14 had identified in a response to a question the possibility
15 that Mr. Treggett was exposed to Unibestos. Do you remember
16 that?

17 A. I do.

18 Q. Okay. I don't believe that Mr. Swett identified the
19 objection that the plaintiff's attorney raised there on the
20 page. Can you explain what that is.

21 A. Yes. Dr. Hammar is being crossed with the question being
22 that the plaintiff has testified about Unibestos. And as
23 Mr. Eddins points out, Mr. Treggett never said Unibestos. And
24 so that foundation -- the question itself lacked the
25 foundation. And he also obviously tipped off Dr. Hammar to

DAVID GLASPY - REDIRECT

1 that fact.

2 Q. Okay. Later on Mr. Hammar continued in this line of
3 questioning there at the bottom of the page and the top, yeah,
4 of the previous page.

5 Here's a depiction of his answer. What -- can you review
6 that and tell me what's happening at the trial there with
7 Dr. Hammar.

8 A. Yeah. After the objection, Dr. Hammar then says, Oh,
9 you're right. I don't remember Mr. Treggett talking about
10 Unibestos. I just know from my time -- his office is in
11 Bremerton which is where the Puget Sound Naval Shipyard is so
12 he sees navy people every day as part of his asbestos business
13 there. And he knows for a fact that Unibestos was on these
14 ships in his own mind and that's what he was talking about.
15 And now he's backing off that and saying, well, no, I don't
16 know what was on the ship and Mr. Treggett didn't say.

17 Q. Okay. So there he says, "I don't recall any statement in
18 there that there was actually Unibestos insulation."

19 A. Right. And then he's talking about he's thinking from
20 what he knows at Bremerton.

21 Q. Okay. So at the end of the day, was there any testimony
22 from the plaintiff's expert that there was Unibestos that
23 Mr. Treggett was exposed to?

24 A. There was not.

25 Q. Okay. Now, let's talk about the Ornstein case.

DAVID GLASPY - REDIRECT

1 Mr. Swett had shown you the Rushworth report.

2 A. Yes.

3 Q. Can you review for the court why defendants would call
4 upon a firm such as that to be involved in a case like the
5 Ornstein case.

6 A. Dennis Rushworth was, again, a naval expert like we had
7 Commander Delaney in the Treggett case, and he was retained by
8 a number of defendants. We joined in that retention in that
9 case to see what we could find out. It was nothing more than
10 a defense expert giving his opinion as to what he believes
11 would have been on board the ships that Mr. Ornstein served
12 on.

13 Q. Okay. And Mr. Swett had displayed Mr. Ornstein's
14 responses to interrogatories and he asked you questions about
15 some of the entities that had been identified. I think it was
16 in response to question number 59.

17 You pointed out something about the identification of
18 fiber suppliers. I was wondering if you could review for the
19 court why you found that notable in Mr. Ornstein's responses.

20 A. Well, a fiber supplier is just that. They sell raw
21 fibers to manufacturers to put in their products. And it just
22 seems impossible that a plaintiff and his attorneys could be
23 responding positively as to the fiber suppliers without
24 knowing the manufacturer of the products those fibers went
25 into. It just doesn't make any sense.

DAVID GLASPY - REDIRECT

1 MR. KRISKO: And if we can look in at the -- at
2 maybe a bigger group of the responses.

3 Q. Can you tell me how many bankrupt companies were
4 identified by -- or if there were any bankrupt companies
5 identified by Mr. Ornstein in those responses.

6 A. I don't recall -- what stood out when I reviewed the box
7 of documents, as we talked about, I don't recall the Simon
8 Eddins plaintiffs identifying any bankrupt entities in their
9 answers to interrogatories.

10 Q. Okay. Mr. Swett also suggested that -- and presented the
11 testimony of Mr. Simon to suggest that the explanation for
12 that might be the fact that the plaintiff lacked personal
13 knowledge of exposures to products.

14 Now, the -- one document that Mr. Swett presented to you
15 was the trial evaluation form for the Ornstein case and it was
16 dated in September of 2008. Do you remember that?

17 A. I do.

18 Q. Would the settlement have been consummated sometime after
19 that form was prepared?

20 A. I reached the settlement before that form was prepared.

21 Q. Okay.

22 A. And I did it sort of backwards, out of the normal
23 procedure.

24 Q. But it was about that time?

25 A. Yes.

DAVID GLASPY - REDIRECT

1 Q. That time period --

2 A. Yes.

3 Q. -- in September of 2008?

4 A. Correct.

5 Q. All right. We looked at one of Mr. Ornstein's trust
6 claims, the AC&S trust claim in your direct examination. If
7 we could just review that briefly.

8 Now, is this -- is this -- in this declaration, he
9 describes -- he actually would remove and replace insulation
10 as well as clean up as needed; is that right?

11 A. That's what he says. And again, this is a declaration,
12 not some trust claim form.

13 Q. So this is based on his personal knowledge. I think it
14 even says that.

15 A. Yes. And it's signed under penalty of perjury.

16 Q. Was this information included in his interrogatory
17 responses?

18 A. No, it was not.

19 Q. Okay. Let's just go to the trust claims.

20 Okay. Now, there were other trust claims. We saw the
21 declaration for Combustion Engineering earlier today. Would
22 that have been another piece of information that was based on
23 Mr. Ornstein's personal knowledge?

24 A. Yes. All these declarations were signed by the plaintiff
25 under his personal knowledge.

DAVID GLASPY - REDIRECT

1 Q. Okay. And that information wasn't provided to Garlock in
2 the discovery process?

3 A. Never was it provided.

4 Q. Okay. Now, here we've identified -- or we've flashed up
5 another declaration. This is for the EaglePicher Company.
6 And again, is this a declaration based on Mr. Ornstein's
7 personal knowledge?

8 A. Signature is right there, and it says personal knowledge.

9 Q. I wanted to ask you about what's highlighted there, the
10 85 percent magnesia pipe covering.

11 We saw in the Rushworth report that the defendants were
12 trying to establish his exposure to something along those
13 lines.

14 A. On board these very ships that he's admitting under
15 personal knowledge existed, yes.

16 Q. Okay. Had the defendants or Garlock had access to -- or
17 had Mr. Ornstein provided this information based on his
18 personal knowledge, would there have been any need for the
19 Rushworth report as it pertained to establishing exposure to
20 this product?

21 A. None whatsoever. As I pointed out in my depo, that's why
22 we never -- or I never used a naval expert in the '90s or the
23 '80s. It wasn't necessary.

24 Q. Now, let's look at the Owens Corning declaration.

25 Okay. Again, this is another declaration based on

DAVID GLASPY - REDIRECT

1 Mr. Ornstein's personal knowledge.

2 A. Yes. His personal knowledge and signed by Mr. Ornstein.

3 Q. Okay. And again, he -- here he identifies his exposure
4 to another 85 percent magnesia pipe covering.

5 A. That's correct. And -- and Kaylo, which was a calcium
6 silicate pipe covering and block.

7 Q. Okay. Again, did he indicate this information to Garlock
8 in responding to interrogatories or at his deposition?

9 A. He didn't provide it to anyone in the tort system.

10 Q. Let's go down and look at the date of Mr. Ornstein's
11 declaration.

12 Mr. Swett characterized the filing of these trust claims
13 as long after the settlement of the Garlock case. Looks like
14 he signed this in March of 2009.

15 A. That's what it says.

16 Q. Okay. And I think you just said that the case was
17 settled in September of 2008.

18 A. Correct.

19 MR. KRISKO: All right. No further questions, Your
20 Honor.

21 THE COURT: All right. You may step down.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness stepped down.)

24 THE COURT: All right.

25 (End of sealed proceedings.)

JORGE GALLARDO-GARCIA - DIRECT

1 MR. WOLF: Good morning, Your Honor. Richard Wolf
2 for the debtors.

3 The debtors call Dr. Jorge Gallardo-Garcia.

4 And Dr. Gallardo-Garcia would not testify to any
5 confidential matters so we can reopen the courtroom if the
6 court wishes.

7 THE COURT: Okay. Would somebody invite the folks
8 in the hallway back in, please.

9 JORGE GALLARDO-GARCIA,
10 being first duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WOLF:

13 Q. Good morning, Dr. Gallardo-Garcia.

14 A. Good morning.

15 Q. Have you reviewed the analytical databases that
16 Dr. Peterson and Dr. Rabinovitz used in performing their
17 estimation work in this case?

18 A. Yes, I have.

19 Q. How did they appear to have constructed their analytical
20 databases?

21 A. Well, based on my review of their codes and the outputs
22 of their computer codes, I think that what they did is took
23 the Garrison Database as -- the May 2011 version of the
24 Garrison Database and then processed it to identify some
25 duplicates and to make some other modifications to how the

JORGE GALLARDO-GARCIA - DIRECT

1 data was presented.

2 Q. When you reviewed their analytical databases, did you
3 find any errors?

4 A. Yes, there were several of them. The errors were mostly
5 due to the lack of use of available information in that case,
6 information that was provided by the debtors and through the
7 the PIQ process. And also, there were coding errors that they
8 had in their computer code.

9 Q. Have you prepared some slides to illustrate your
10 testimony today?

11 A. Yes, I have.

12 Q. Could you explain the nature of the first set of errors
13 that you identified.

14 A. Well, the first error that I identified on my report was
15 that they overestimated the number of pending mesothelioma
16 claims that are in the database.

17 Q. And does this slide entitled Classification Errors for
18 Pending Mesothelioma Claims by Drs. Rabinovitz and Peterson
19 summarize your analysis of their counts of the pending
20 mesothelioma claims?

21 A. Yes, that's correct. The blue bars denote the correct
22 number of the -- of pending mesothelioma claims that can be
23 calculated based on the available information in this case.
24 And the other colored portions of the bar are the errors or
25 the over or under counts that both Drs. Rabinovitz and

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1 Peterson have in their own analytical databases.

2 Q. Were you able to determine why Dr. Rabinovitz and
3 Dr. Peterson's databases contain these errors regarding the
4 number of pending mesothelioma claims?

5 A. Yes. As I said, for the most part it was because they
6 did not use the information from the questionnaire. There
7 were some other errors that came through based on the computer
8 code they used to process the original Garrison Database to
9 convert it into their analytical databases. But the main
10 source of their errors was not using the questionnaires.

11 Q. When you say they didn't use the information from the
12 questionnaires, what information are you talking about?

13 A. Well, in this case, for the most part claimants and the
14 representatives indicated through communications, through
15 letters and through their own PIQs, they communicated that
16 they did not have a pending mesothelioma claim anymore or that
17 they never had a pending mesothelioma claim.

18 Q. So with this correction to Dr. Rabinovitz and
19 Dr. Peterson's databases, you are not talking about
20 individuals who did not return a PIQ. You're talking about
21 individuals who returned one and said they did not have an
22 open mesothelioma claim.

23 A. That's correct. If we did -- if there is no information
24 regarding the status of a claim and the claim appeared in the
25 Garrison Database of May 2011 as an open mesothelioma claim,

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1 it will be part of the blue box.

2 Now, if we have information directly to the contrary,
3 either because it was part of the -- well, basically, because
4 it was part of the information available in the case, then
5 that will have been reclassified and potentially will be in
6 one of the colored parts for Drs. Rabinovitz and Peterson.

7 Q. Did Dr. Rabinovitz and Dr. Peterson also err in
8 categorizing some claims that are, in fact, open mesothelioma
9 claims as closed mesothelioma claims?

10 A. Yes, there were errors in the other direction too. Most
11 of them came -- were due to the computer code they used to
12 process the Garrison Database.

13 So when they were, for example, trying to identify and
14 eliminate duplicates, they had -- the code that they used to
15 identify duplicates might have identified too many duplicates
16 that were not so.

17 Q. So the yellow bar that's under the zero line in
18 Dr. Peterson's column --

19 A. Yes.

20 Q. -- is that because he identified too many duplicates and
21 therefore should have classified some of the ones he
22 identified as duplicates as open mesothelioma claims?

23 A. That's correct.

24 Q. What was the net effect of the errors we've discussed
25 about the number of pending mesothelioma claims?

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1 A. Well, the net effect is reducing the total number of
2 pending mesothelioma claims Drs. Rabinovitz and Peterson had
3 in their analytical databases to the blue bars that we see
4 here. It was in the range of 750 mesothelioma pending claims
5 that they had in their databases that were not to be
6 classified as such.

7 Q. Let's talk about the questionnaires a moment.
8 Dr. Rabinovitz testified that she did not use responses to the
9 questionnaire in her work because in her view they were too
10 ambiguous to be useful.

11 Focusing for the moment on responses stating that
12 individuals did not have a mesothelioma claim or had resolved
13 their mesothelioma claim against Garlock, is Dr. Rabinovitz's
14 opinion correct?

15 A. I don't think it is. I myself reviewed a large number of
16 those -- of the documents that we used to reclassify --
17 reclassify records in the Garrison Database and that was part
18 of the Garlock analytical database later. And to me at least,
19 the assertions from the claimants themselves were -- or their
20 representatives were very clear.

21 Q. Have you prepared some examples for the court today
22 showing the nature of the responses that resulted in Bates
23 White classifying mesothelioma claims as not being open
24 mesothelioma claims?

25 A. Yes, we have some examples on the slides.

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1 Q. And you have redacted any individual claimant information
2 from these slides in order to protect the confidentiality?

3 A. That's correct. The gray boxes are -- behind the gray
4 boxes we can see that we will be able to see the names of the
5 actual claimants.

6 Q. Can you briefly describe what -- what you summarized for
7 the court here.

8 A. Yes. For example, this is an example of a letter from
9 the Peter Angelos law firm where he was listing that these
10 individuals do not have pending mesothelioma claims against
11 the debtors as of the petition date. And then he tells us
12 what were the -- what are the status of those cases with
13 respect to Garlock and Anchor Packing. You can see many of
14 them are dismissed and some of them are settled.

15 Q. Is this another example?

16 A. Yes, this is another law firm letter where they
17 identified what were the -- what was the status of their
18 claims and why they were withdrawing the claims.

19 Q. And this here?

20 A. These are specific examples of questionnaires where the
21 claimants or the representatives objected to the questionnaire
22 itself because -- alleging that the questionnaire didn't apply
23 to them because they didn't -- did not have an open
24 mesothelioma claim anymore.

25 This is the same situation. These were dismissed cases.

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1 In these examples it's -- again, the top part is specific
2 PIQ and the second part is a letter from a law firm that is
3 withdrawing or saying that they will not pursue their claims
4 against Garlock.

5 This example is just a list of -- from the Peter Angelos
6 letter that says how many -- which of their clients do not
7 have -- have not been diagnosed with mesothelioma.

8 And this is a similar -- similar outcome, but this is for
9 a specific PIQ.

10 MR. WOLF: Your Honor, may I approach the witness?

11 THE COURT: Yes.

12 Q. I've handed you what has been marked as GST7224. Is this
13 a collection of the questionnaire responses that you used in
14 constructing the slides that we just went over?

15 A. Yes. These are just the ones we showed on the slides,
16 but obviously -- I mean, what we showed on the slides is the
17 typical response that we will have seen for a claimant out of
18 the -- of all the claimants that were classified as not being
19 open mesothelioma claims.

20 Q. Now, Dr. Peterson testified that he thought one should
21 not take into account people who responded by saying they did
22 not have mesothelioma because that would introduce a bias in
23 the analysis. I believe Dr. Bates is going to address that
24 point.

25 What I wanted to ask you is are people who said they did

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1 not have mesothelioma the main source of the criticisms that
2 you have of the pending claim counts of Drs. Rabinovitz and
3 Peterson?

4 A. No. If we go one slide back.

5 As you can -- the number of cases that were classified as
6 mesotheliomas in Dr. Rabinovitz's databases are the purple --
7 and that are not mesothelioma cases are the purple bars at the
8 top. So as you can see, the main source of the
9 misidentification was not recognizing that there were cases
10 that actually had -- that were related to mesothelioma
11 diagnosis but were already resolved against them.

12 Q. And the green bar are the ones where, by looking at the
13 available information, Bates White determined that the
14 mesothelioma claim had been resolved?

15 A. Yes, for the most part dismissed. Some of them settled,
16 but for the most part dismissed.

17 Q. Does taking into account information indicating that the
18 claim was dismissed or otherwise resolved introduce any
19 potential bias?

20 A. I don't think so. These cases were -- that's the status
21 of the case. They are not -- these are cases that are not
22 going to -- that do not exist against Garlock now and they
23 will not exist in the future because they have been already
24 dismissed.

25 Q. As a general matter, in social science research is it

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1 proper to ignore available data?

2 A. Well, I think that is not appropriate of social science,
3 is appropriate of any serious research. If there is important
4 available data that you can review and assess and use, that's
5 the common practice for -- in any kind of setting that I've
6 been involved with.

7 Q. Did Bates White share information with all parties early
8 on in the questionnaire process about how the questionnaire
9 responses affected the number of open mesothelioma claims?

10 A. Yes. On January and February of 2012 there were two
11 hearings about the progress of the information that made it
12 through the questionnaires. And for that Bates White prepared
13 some lists of claimants that had been based on the information
14 provided by -- through the PIQ have been reclassified from
15 being pending mesothelioma claims to not being pending
16 mesothelioma claims. I prepared a declaration for the court
17 and that declaration was presented in those -- in one of those
18 hearings.

19 Q. I've handed you what is marked as Trial Exhibit GST6596.
20 Is this one of the declarations that you prepared and that was
21 submitted to the court?

22 A. Yes. And as an attachment of that, one of the exhibits
23 at the back is the list of the claimants, the list of PIQ
24 claimants and what was the new classification that we had
25 found in the documents submitted.

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1 Q. I think the only part of this slide we haven't talked
2 about is the red box in Dr. Rabinovitz's column.

3 A. Right.

4 Q. Can you please explain what that means.

5 A. Well, in her estimate she included -- she used a response
6 from the debtors to interrogatories regarding what were the
7 cases that had been settled before petition but have not yet
8 been paid and other cases in which the claimants or the
9 plaintiff law firms say that those cases have been settled but
10 Garlock has not accepted those settlements. So those are
11 what's been called the contested settlements.

12 Q. And does the red box represent the errors that
13 Dr. Rabinovitz had in interpreting the interrogatories?

14 A. Yes. So what -- we have a couple of slides about that.
15 But basically, what happened is that on these responses to
16 interrogatories, there were four tables that listed claims
17 with different statuses.

18 For example, the C1 table had claims that had been
19 already resolved with Garlock. Some of them were already paid
20 or were dismissed without payment. So those were not pending
21 at all. And some of them were settled before petition but
22 haven't been paid yet.

23 Then a similar situation was -- or a similar status was
24 for the claims on Exhibit E which it was a number of claims
25 that had been settled before petition but hadn't been paid

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1 before petition.

2 And then there were two other lists, C1 and D, that were
3 cases in which the plaintiffs or their representatives say
4 that they already had a settlement with Garlock but Garlock
5 hadn't accepted those settlements.

6 So the problem with Dr. Rabinovitz's count in terms of
7 the -- of how many pending claims there were is that she used
8 Exhibit C both to count the number of cases that were pending
9 payments, let's say, and the cases that were contested
10 settlements.

11 What I think she meant to use was Exhibit C2, but there
12 was, I think, an error in her code and she introduced
13 duplicates by doing so.

14 This is basically the outcome of her -- of her code. So
15 in the end, if we count the number of pending payments and
16 disputed settlements that -- or contested settlements that she
17 had on her report, there were 427. If you apply -- if you use
18 the exhibits correctly, you will get 299. And as you can see,
19 the larger difference is the difference between the contested
20 settlements and the -- the contested settlements. She got
21 greater than 181 and there were actually 92 cases.

22 Q. So the result of that is for that reason she had too few
23 pending mesothelioma claims?

24 A. Yeah. Well, there are two errors actually. So on the
25 one hand, because she overcounted the number of contested

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1 settlements and pending payments, when she subtracted that
2 number from the pending -- the number of pending claims to --
3 she had -- she subtracted too many cases.

4 But on the other hand, because she -- she overcounted the
5 number of contested settlements and she valued those
6 settlements at higher amounts than all the other cases she
7 valued, then she creates the -- she basically overestimated
8 the forecast.

9 Q. So the net effect of all of her errors with respect to
10 the pending claims means that like Dr. Peterson, she had too
11 many pending mesothelioma claims?

12 A. In both cases, both Dr. Rabinovitz and Dr. Peterson have
13 about 750 too many open mesothelioma cases in their databases.

14 Q. How did the -- all the errors with respect to the number
15 of pending mesothelioma claims affect Dr. Rabinovitz and
16 Dr. Peterson's forecast?

17 A. Well, the first effect is they valued too many pending
18 cases. That's the first defect.

19 Then because most of the cases were dismissed as we can
20 see with the green portions of the bars because many of
21 them -- most of them were dismissed, those were cases that
22 will have entered into the calculation of the dismissal rate
23 and therefore the computation of the settlement rate. And
24 that will have reduced the percentage of payment -- of cases
25 to be paid that they had.

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1 Q. Now, for that reason and for others, did you identify
2 database errors that led to Dr. Peterson and Dr. Rabinovitz
3 having incorrect settlement rates?

4 A. Yeah. Well, this -- I think that there is -- this is the
5 settlement amounts, but we can -- it's one of the charts.

6 Q. Sorry about that. There it is.

7 A. Yeah. So based on -- given that they didn't take into
8 account these additional dismissals, and also they had some
9 issues with the timing of the cases they used in their codes,
10 they basically overestimated the percentage of cases that will
11 be paid for their calibration periods.

12 On this table what we can see is that we calculated --
13 well, we saw what was the rate that they used, that
14 Dr. Peterson and Dr. Rabinovitz used in their reports and we
15 see what will have been the -- using those same calibration
16 periods and the same -- the same way which they calculated
17 the -- the rates, we will have gotten different lower rates of
18 settlement.

19 Q. So this is taking how they did the calculations and
20 corrected the database errors?

21 A. Yes. This represents their calculations. This just
22 changes the data that underlies.

23 Q. Did you also identify database errors that resulted in
24 Dr. Rabinovitz and Dr. Peterson having incorrect average
25 settlement amounts?

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1 A. Yes.

2 Q. Does this slide 15 describe your conclusions with respect
3 to that?

4 A. Yes. So basically, I mean, there were a couple of
5 different errors that they have in their database. One of the
6 errors, and that's, I believe, something that was mentioned in
7 testimony by Dr. Rabinovitz, was the misplacement of three
8 cases. While these three cases were three verdicts that
9 actually occurred in the early 2000s -- I think that one of
10 them occurred in 2002, one of them in 2004, and the other one
11 in early 2005. But these three cases had a contribution
12 payment from a trust paid to Garlock in 2010.

13 So what both Drs. Rabinovitz and Peterson did was take
14 the very last date in the database and they put the whole
15 amount of the verdict on that date. So the problem with that
16 is that from the cases being outside the window or outside the
17 calibration period that they used for their estimates, they
18 included those three verdicts in the calibration window and
19 that increased their amounts.

20 This is not shown in this -- on this table, but this is
21 on my report. And the effect of those three cases -- that
22 those three cases had on the 2010 average settlement amount
23 was about 25 percent.

24 There were other errors that had to do with not
25 considering about a hundred settlements that were reported on

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1 this list that I was talking about before, the responses to
2 interrogatories. Those cases were not considered either.

3 So the total -- the total effect of the -- of not
4 considering all the information available was basically for
5 2010 specifically. Instead of calculating a settlement
6 amount -- average settlement amount that was about \$60,000,
7 they calculated an amount that was more than \$90,000. And
8 that's what they've shown on their tables.

9 Now, in terms of their calibration period and the numbers
10 that they actually used for their estimates, they
11 overestimated their amounts by 9 and 7 percent respectively.

12 Q. Now, has Dr. Bates calculated the effect the database
13 errors you've identified had on Dr. Rabinovitz and
14 Dr. Peterson's forecast?

15 A. Yes, he did. One thing to know is that although these --
16 the changes -- the errors in the settlement rate and the
17 errors in the -- on the averages seem to be relatively low
18 when they actually compound. So when you put them together,
19 the total effect on, for example, Dr. Rabinovitz's average
20 resolution amount would be 10 percent of her estimate.

21 Q. Did your report contain further detail on your criticisms
22 of Dr. Peterson and Dr. Rabinovitz's database errors?

23 A. Yes, it does. It has all the explanations of how we are
24 concerned with these numbers. What were the comparisons. It
25 has more detail about what were the errors. And the

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1 underlying computer code and the databases that we provided as
2 part of the production after we submitted a report has all the
3 details about these issues.

4 Q. Before we finish, I'd like to briefly cover two more
5 issues that have arisen during the trial.

6 First of all, when Mr. Rice testified and he was showed
7 his firm's settlement average against Garlock and mesothelioma
8 cases, he explained it as a result of the allegedly large
9 number of railroad cases where he asserted Garlock was a more
10 minor player. Have you put that testimony on a slide here?

11 A. Yes.

12 Q. Have you looked into the issue of --

13 MR. SWETT: Your Honor, objection. This is not in
14 his rebuttal report or any other report received from this
15 expert.

16 MR. WOLF: Your Honor, this is an issue that
17 Mr. Rice raised during the trial and could not have been
18 anticipated.

19 THE COURT: We'll let him -- we'll let him go ahead.

20 Q. Have you looked into the issue of the mix of railroad
21 cases versus other cases in the Motley Rice mesothelioma
22 settlements with Garlock?

23 A. Yes. Yes, we did. We actually prepared a couple of
24 slides about that. So what we -- the exercise that we
25 conducted was --

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1 MR. SWETT: Excuse me, shouldn't the settlement
2 distribution be confidential? Can you do this without showing
3 it on the screen?

4 MR. WOLF: I don't think it was made confidential in
5 Mr. Rice's testimony, was it?

6 MR. SWETT: I don't think there were numbers like
7 that.

8 MR. WOLF: We're happy to make it confidential if
9 you think it should be.

10 MR. SWETT: Yes.

11 MR. WOLF: But we do need to show it on the screen.

12 MR. GUY: Do you need to show it on that screen? As
13 long as the witness and the judge sees it.

14 THE COURT: Why don't you hand me the exhibit.

15 MR. WOLF: Sure, we can do it that way.

16 (Documents were tendered to the court, counsel, and
17 the witness.)

18 Q. Dr. Gallardo-Garcia, so the results of your analysis of
19 this issue are on slide 17 that we've now handed out to the
20 court and the other parties.

21 A. Right.

22 Q. Could you explain the results of your analysis without
23 getting into specific settlement amounts.

24 A. Well, so what we basically did was we tried to
25 identify -- to identify all the cases that have settled with

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1 this law firm that were associated to railroad cases -- or to
2 railroad.

3 Basically, we had information from Garrison where they
4 identified which cases have been part of railroad settlement
5 agreement and we also used all the information that we had
6 on -- in the Garlock analytical database in terms of
7 occupations and industries to identify who have been
8 associated to a railroad in the -- from the claimants that
9 were represented by this law firm and that settled with
10 Garlock.

11 So we also separated the settlements by errors. One is
12 the -- at the bottom of the table is the pre-2000 time. And
13 then the -- at the top of the table is the 2000s, starting in
14 2000 through petition.

15 And I believe the idea of the -- or Mr. Rice's testimony
16 was that his amounts have increased in the 2000s on average
17 and also that the averages and the medians that were shown in
18 court that day were very low or were relatively low because
19 they had railroad cases.

20 So as we can see on these tables, the averages, it's --
21 when you compare the railroad cases in the 2000s to the
22 non-railroad cases, the other category, the average amounts
23 are relatively similar, very similar. And when we look at the
24 medians, they are the same.

25 Now, another question was whether we had included

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1 affiliate law firms. And we did the same exercise with the
2 known affiliated law firms that we had in the database, and we
3 recalculated the same table. And although the other average
4 is slightly higher for the -- in the 2000s for the
5 non-railroad, the averages are relatively close and the median
6 is again the same.

7 Q. And then on slides 18 and 19 which I also will not
8 display publicly but which the court and the parties have, did
9 you look at the occupation mix among the non-railroad cases?

10 A. Yes, to verify that there was no -- that there were no
11 railroad cases in the -- in what we classified as other, we
12 went on to the information available and we looked at what
13 were the occupations. And as we can see, even when we split
14 by occupation, we have claimants that will have been in the
15 groups that, for example, Mr. Henshaw classified as having the
16 most likely -- the highest likelihood of contact with gaskets
17 like pipefitters and machinists and insulators.

18 And we see that the averages are again very similar and
19 the medians are the same both when we looked at these law
20 firm's settlements by itself and when we look at the -- when
21 we include the associates on the table which is the slide 19,
22 the last slide.

23 Q. The final issue I wanted to address with you today is the
24 testimony by Dr. Peterson that his company had to spend six
25 weeks reverse engineering to determine how Bates White

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1 calculated its estimate. You were here and heard that
2 testimony?

3 A. Yes, I was.

4 Q. I've handed you two email strings marked GST7238 and
5 GST7237 which were discussed. But as a general matter, does
6 Dr. Peterson's testimony about having to reverse engineer the
7 calculations match with your understanding of the facts?

8 A. Well, my understanding is that we were available to
9 answer any questions they might have had at any point in time,
10 and these two emails basically record communications that we
11 had about that topic. And there were no -- no communications
12 to us that indicated that they were not able to understand the
13 materials that we had provided them.

14 Q. To get the timing correct, sometime after the report
15 deadline on February 15, did Bates White send voluminous
16 backup materials supporting the analysis in the report to
17 Dr. Peterson and Dr. Rabinovitz?

18 A. Yes. The reports were due February 15th. We -- Bates
19 White took probably between six and ten days to put together
20 the background materials. And we provided those on hard
21 drives that we sent via parcel, parcel service.

22 And then the email that you have -- the first email on
23 these -- on this exhibit is basically an email that we
24 received -- or that Mr. Cassada received on March 1st, is
25 basically two weeks after we submitted the expert reports.

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1 Q. I think you're referring to the March 1st, 2013 email at
2 4:05 p.m. Looks like it was actually to me. Did you get
3 forwarded a copy of this email?

4 A. Yes. Mr. Cassada contacted me after receiving this email
5 asking me to provide the requested information.

6 Q. The next email in the string is from Mr. Cassada to
7 Mr. Swett. It looks like it's less than an hour and a half
8 later on a Friday afternoon. Did you provide the content of
9 the email that Mr. Cassada sent to Mr. Swett and Mr. Guy?

10 A. Yes. For the -- yeah, for the most part all the sections
11 were -- it's described where the data is to make the -- to
12 reach the calculations. Where the code is. What are the --
13 what are the sections where the intermediate steps were saved,
14 the intermediate files that we can review all the
15 calculations. All of those things were listed here.

16 Q. Would someone with a basic understanding of statistics
17 and statistics computer programs have been able to use those
18 instructions to find the calculations?

19 A. I think that that will be definite. The instructions --
20 the instructions that we show here give the exact location of
21 the files. Now, within the files that I'm referring to on
22 these instructions, there are notes and there are -- they are
23 numbered. They are organized in a way that shows what are the
24 order of the calculations. Within the scripts or the computer
25 code there are notes that indicate what is the step that is

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1 occurring. And you can also see what are the databases or the
2 database that is being used and what are the fields in the
3 database that are being used. All those instructions are easy
4 to see in this -- in those materials.

5 Q. Mr. Swett in his email response to Mr. Cassada thanks you
6 and Dr. Bates. Did you hear anything else from Mr. Swett or
7 Dr. Peterson after March 1?

8 A. Well, we didn't -- we didn't that weekend. Apparently
9 there were no additional questions on that weekend. But the
10 second email that you gave me asked for one additional
11 clarification.

12 Q. And this is an email on March 13, 2013, from Mr. Wehner
13 to me. Did you receive a copy of this email?

14 A. Yes. You forwarded to me the -- that email.

15 Q. And this is also talking about the calculation. And did
16 you provide the content of the email that I sent a few hours
17 later to Mr. Wehner, Mr. Swett, and Mr. Guy?

18 A. Yes, I did.

19 Q. Could the instructions in that email have been used to
20 find the calculations?

21 A. Yeah. Well, that was the exact location of the -- of the
22 file that they were looking for and the file was an Excel file
23 that was easy to open by anyone. And the numbers that I think
24 they were asking for on the email were the numbers that were
25 in the first half of the file.

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1 Q. Thank you. I handed you -- when I handed you the slide
2 show, I handed you exhibits marked GST Trial Exhibit 1002 and
3 Trial Exhibit GST7243. Could you please identify those
4 documents.

5 A. Yes. The 1002 is my rebuttal report. And the 7243 is an
6 errata to my rebuttal report. It's actually to both of my
7 reports, the affirmative and the rebuttal reports.

8 Q. And then I handed you a copy of the slide show. Could
9 you identify that by GST number for the record.

10 A. Yes. It's 8025. That's -- those are the slides that we
11 saw today.

12 MR. WOLF: Your Honor, we would move to admit the
13 declaration that I showed Dr. Gallardo-Garcia which is
14 numbered GST6596, also the sample questionnaires that are
15 marked as GST7244, the two emails that I identified on the
16 record, his slide show for demonstrative purposes, and then
17 his rebuttal report and the errata page to his report, the
18 latter two for Rule 104 purposes.

19 MR. SWETT: Subject to those limitations, no
20 objection.

21 THE COURT: All right. Admit all that.

22 (Debtors' Exhibits Nos. 1002, 6596, 7237, 7238,
23 7243, 7244, and 8025 were received into evidence.)

24 MR. WOLF: Thank you, Dr. Gallardo-Garcia. No
25 further questions.

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1 THE WITNESS: Thank you.

2 CROSS EXAMINATION

3 BY MR. SWETT:

4 Q. Good morning, Dr. Gallardo-Garcia.

5 A. Good morning.

6 Q. Your assertion is that -- among others, is that
7 Dr. Peterson overestimates the percentage of mesothelioma
8 claims that were paid by Garlock historically, correct?

9 A. That's correct, given his calibration window.

10 Q. And you say that that overstatement results principally
11 because Dr. Peterson didn't use the questionnaire responses to
12 identify mesothelioma claims that had been dismissed in the
13 tort system or otherwise resolved but not recorded as such in
14 Garrison's database, correct?

15 A. That's correct.

16 Q. Now, the questionnaire did nothing to identify
17 mesothelioma claims filed prepetition but not recorded in
18 Garlock's -- in Garrison's database, did it?

19 A. Say that again. Can you repeat the question, please.

20 Q. The questionnaire didn't concern itself with identifying
21 claims for mesothelioma that had been filed before the
22 bankruptcy but had not found their way into Garrison's records
23 as such. The questionnaire didn't try to ferret out those
24 claims, did it?

25 A. Well, I think that -- that's correct. I think that

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1 initially the first questionnaire was going to be submitted to
2 law firms and to us to provide questionnaires for all their
3 mesothelioma cases that they had against Garlock, but then it
4 was restricted only to the ones that were in the database.

5 Q. Well, actually, it was restricted to mesothelioma claims
6 reflected as such in Garrison's records. And that doesn't
7 necessarily mean just the database, does it?

8 A. I don't know what you mean by that.

9 Q. Okay. Well, at any rate, Bates White itself undertook no
10 effort to ascertain how many unrecorded mesothelioma claims
11 might exist at the petition date, did it?

12 A. No, we did not.

13 Q. And to your knowledge, the debtors made no such effort in
14 the questionnaire process or related inquiries, correct?

15 A. Well, I actually think they did. When they were updating
16 the Garrison Database, I think that they did look for which of
17 the records that were in the Garrison Database were not
18 mesotheliomas but -- were not classified as mesotheliomas but
19 in fact were.

20 Q. You're speaking of the roll forward of the database from
21 September 2010 to May 2011?

22 A. Yes, I think that's --

23 Q. After that -- strike that.

24 Now, at the beginning of the case, Garlock obtained an
25 order requiring law firms in certain circumstances to submit

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1 Rule 2019 statements, correct?

2 A. That's correct.

3 Q. And you're aware that the form of the required 2019
4 statements included the listing of clients and the
5 identification of the diseases from which they suffered,
6 correct?

7 A. I believe that's correct.

8 Q. But Bates White did not look at the 2019 statements filed
9 in this very case to ascertain how many claimants they might
10 identify with mesothelioma who wouldn't be listed at that
11 point in the Garrison Database as such, correct?

12 A. Well, we did some analysis about that, actually, and it
13 was not a significant amount of cases. And many of the cases
14 that were listed on the 2019s were actually already settled or
15 dismissed in the Garrison database.

16 Q. That analysis is not in either of your reports, is it?

17 A. No, it's not.

18 Q. You are familiar with a procedure that data analysts
19 sometimes use of comparing a late version of a database to an
20 earlier version of the same claims database in order to
21 observe changes?

22 A. Yes. We do -- we do those things to ensure that the --
23 that we understand what is the data that we have at hand and
24 what is the better version of the data to use.

25 Q. So for example, the September 2010 Garrison Database

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1 could have been compared to previous editions of the database
2 that Bates White had received in its prepetition services to
3 EnPro, correct?

4 A. Yes.

5 Q. And it would not have been unusual, would it, to observe
6 in that comparison cases being reclassified from one disease
7 category to another over time?

8 A. Well, I mean, it wasn't typical. I mean, that was
9 observed, but it wasn't typical.

10 Q. You're familiar with a procedure that some data analysts
11 use in this context called a transition matrix?

12 A. Yeah. I mean, as a general concept I know what a
13 transition matrix is.

14 One thing that is very important is to understand what is
15 the transition and why the transition is happening and
16 that's -- I don't think that that's -- the manner in which
17 Dr. Peterson used those transition matrixes were appropriate.

18 Q. Well, oftentimes it is the case that an asbestos
19 defendant will take in a case, record information in the
20 database, but not yet at that time have disease information to
21 record, correct?

22 A. Yes, it happens.

23 Q. And sometimes -- and so those often are put into a
24 category of unknown disease, correct?

25 A. Correct.

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1 Q. And over time, as the information grows and the defendant
2 becomes better informed, those cases are often recategorized
3 and assigned to particular disease categories, correct?

4 A. Correct.

5 Q. Among those disease categories being mesothelioma,
6 correct?

7 A. That's correct.

8 Q. And sometimes the initial recordation of a case with a
9 disease categorization turns out over time to have been
10 incorrect in the first instance, right?

11 A. That's unusual.

12 Q. But it does happen.

13 A. That's happened, yes. It's -- usually asbestos-related
14 databases have hundreds of thousands of records. In the case
15 of Garlock, we have -- we have a database that has already
16 900,000 records and always, as I described in my prior
17 testimony, mistakes on those databases are always possible.

18 Q. And so an analysis can be done to observe historically
19 the error rate and the rate at which cases originally recorded
20 in one disease category migrate over time into other disease
21 categories, including mesothelioma, correct?

22 A. That's correct. The -- but also an analysis could be
23 done about trying to understand how that error rate might
24 change because one -- one thing that we know about cases --
25 about asbestos cases is that if a claimant has mesothelioma,

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1 the claimant is going to -- is likely going to let the -- let
2 the defendant know that it's a -- this is a mesothelioma claim
3 as soon as possible.

4 So there is a different timing for becoming -- for
5 updating an unknown disease case from -- into a mesothelioma
6 than there is to -- from updating an unknown disease case to
7 non-malignancy, for example.

8 Q. Neither of your reports in this case reports on any
9 comparison of the Garrison May 2011 database to prior editions
10 of the database for the purpose of identifying mesothelioma
11 claims that may have been misclassified in the past.

12 A. No, my reports don't have that subject. Although,
13 Dr. Bates did some analysis about that.

14 Q. Now, the Garrison Database does reflect, doesn't it, that
15 in 2009 Garlock dismissed an unusually high number of cases?
16 Are you aware of that?

17 A. I don't know what you mean by unusually high.

18 Q. Let's take a look at ACC927.

19 I'm looking at the bars in 2009. This is a -- I should
20 explain first this is a chart based upon the Garrison Database
21 that classifies dismissals according to the age of the case or
22 how much lag there was between the filing of the case and its
23 dismissal. And as you'll see, the purple part or parts of the
24 bars are cases that lagged by five years or more. Do you see
25 that, sir?

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1 A. Yes, I do.

2 Q. So this chart would indicate, for example, that in 2009
3 there was a very high level of the dismissal of such cases in
4 that lag category compared to the three years prior and even
5 the fourth year before that, correct?

6 A. Yes. Are these mesothelioma claims only or...

7 Q. Yes.

8 A. Yes. I mean, that's what I see on the table, but I -- I
9 mean, on this chart, yes.

10 Q. Is that a pattern that you had observed for yourself
11 before seeing the chart?

12 A. I don't recall this pattern.

13 Q. Are you aware of any change in Garlock's claims
14 management practices at or about 2009 that would explain this
15 pattern if it accurately reflects the Garrison Database?

16 A. I'm not aware of any.

17 Q. And as you'll see the level of dismissals of older cases,
18 five years and older, is also comparatively high in 2010,
19 correct?

20 A. That's -- yeah, that's what the chart shows.

21 Q. Do you have any reason to believe that commencing in
22 2009, Garrison undertook any sort of project to clean up its
23 database in anticipation of bankruptcy?

24 A. I don't know about that. But these are clearly dismissed
25 cases. So, I mean, they should have been recorded on the

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1 database at some point or another. I don't know when they --
2 I mean, I don't know about the timing, but these are
3 dismissals.

4 Q. Now, if we focus on 2005 and again on that purple part of
5 the bar, and then we compare it to the three years following,
6 if we were standing in 2005 and projecting and we were focused
7 on the extent of the dismissals of cases five years and older
8 and we were to project just on the basis of that 2005
9 experience, that would be somewhat misleading with respect to
10 the three following years, wouldn't it? In a forecasting
11 mode.

12 A. (No response.)

13 Q. Because of the spike.

14 A. Well, I don't know -- I'm -- I cannot answer that
15 question. I don't know why you would only use 2005.

16 Q. No, no. I'm just asking you to bear with me on this
17 hypothetical. If the analyst were to project standing in 2005
18 based upon the rate at which older cases were dismissed in
19 that year, it would sort of miss the target in terms of
20 forecasting for the next several years, wouldn't it?

21 A. Yes. If you just took that number and blindly used it to
22 extrapolate something. The point is that if you saw that
23 there was that difference in the dismissal rates or in the
24 number of dismissals from one year to the next, you'll try to
25 understand why that was the case and what will be the

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1 appropriate portion of the data to use.

2 Q. And one thing that a reasonable data analyst might do is
3 construct an assumption based upon observed experience for a
4 broader period of time, correct?

5 A. That's one thing that one could do.

6 Q. To sort of smooth the curve and normalize the experience
7 rather than depend upon the experience of a single year that
8 might not be recurring.

9 A. Well, I mean, to have a better estimate, I don't know
10 what you mean by smoothing the curve.

11 Q. I mean avoiding the distorting influences of a particular
12 spike or -- an anomalous period. Data analysts commonly
13 engage in exercises to construct calibration periods, correct?

14 A. Yeah. You -- yeah, you -- that's something you can do,
15 yes, of course.

16 Q. So that would observe -- for the particular metric that
17 you happened to be interested in as it existed in several
18 different years over a selected period to construct a
19 normalized assumption with respect to that particular metric
20 for forecasting purposes, right?

21 A. I don't know what you mean by normalized. I mean, there
22 is a specific definition of normalizing in statistics. I
23 don't think that you're using it that way.

24 Q. Well, I'm not a statistics maven so you're appropriately
25 cautious in that.

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1 All I mean to say is that as a common procedure, when
2 faced with this kind of data analysis problem, to construct a
3 calibration period, to observe the data over that period, and
4 on the basis of that observation of a wider period of time, to
5 construct a rationally based assumption for use in forecasting
6 the future. That's all I'm talking about.

7 A. Yeah, I mean --

8 Q. That's a calibration --

9 A. You might -- there might be different -- different
10 periods of time that you use to calculate statistic that then
11 you apply to -- for an extrapolation, yes. I mean, but I
12 think that the most important thing will be to understand what
13 it is that you're including in your calibration period.
14 That's the -- I think that's the most important thing.

15 Q. Okay. Now, switching gears. Bates White used the
16 questionnaire responses to determine that some significant
17 number of claims recorded in Garrison's database as open
18 mesothelioma claims were not, in fact, open mesothelioma
19 claims at the petition date, either because they were
20 previously paid or they were previously dismissed, right?

21 A. Correct.

22 Q. Or because they belong to individuals who do not contend
23 that they have mesothelioma; that they were mischaracterized
24 in the database itself.

25 A. That's correct.

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1 Q. Correct?

2 Now, in the ordinary course of Garrison's claims
3 management outside of bankruptcy, that kind of information
4 would have come to the fore over a period of time, wouldn't
5 it?

6 A. Yes. I guess, yes.

7 Q. So that the claim that was mischaracterized as a
8 mesothelioma claim in the ordinary course of events outside of
9 bankruptcy would have come to the fore, would have been
10 settled or dismissed, would have made itself known to Garrison
11 as not a mesothelioma claim, right?

12 A. I don't think that in every single instance. I mean, we
13 see in the database that there were cases that have been
14 pending or open for years, for tens of years.

15 Q. Nothing is perfect. We can stipulate to that.

16 A. Yes.

17 Q. But by and large, over the course of time, a
18 misclassified mesothelioma claim would reveal itself as such
19 to Garrison and Garrison would update its database
20 accordingly, correct?

21 A. Yes, I think that would be --

22 Q. Okay.

23 A. That's correct.

24 Q. Rather than giving effect to that process over time as it
25 would have unfolded outside of bankruptcy, however, Bates

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1 White adjusted the Garrison Database in its analytical
2 database by counting the dismissed mesothelioma claims that
3 were -- that emerged as such from the questionnaire process,
4 correct?

5 A. Well, we are talking now about dismissed cases. These
6 cases are dismissed. So there is no -- I mean, this is --
7 this is just a matter of data recording.

8 Q. We're talking about data claims management.

9 A. Yeah, we are talking about the fact that these cases are
10 dismissed so if they are dismissed, they should be reflected
11 as such in the database.

12 Q. And so rather than construct an assumption and project
13 over time the rate at which cases are dismissed making
14 whatever statistical adjustments it thought appropriate based
15 on experience, Bates White relied on the questionnaire process
16 to trump the Garrison database and override the ordinary
17 course procedures by which that database had been constructed
18 in order to take account of the questionnaire responses,
19 correct?

20 A. Well, as a matter of any scientific process, if you can
21 observe the actual event, you don't try to forecast it.

22 So in this case we observed the fact that these cases are
23 actually dismissed. So there is no reason for making any
24 assumption about those. If they are dismissed they are
25 dismissed.

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1 Q. If we were to use the historically based -- a dismissal
2 rate for forecasting that was constructed on the basis of
3 Garrison's data as it stood in May 2011 but bring it to bear
4 on the Garlock analytical database constructed by Bates White,
5 we would, in effect, double count dismissals, wouldn't we?
6 That wouldn't fit, would it?

7 A. Can you repeat that question. I got lost there.

8 Q. Suppose I were to take the Garrison 2011, May 2011
9 database. Construct the calibration period. Derive a
10 dismissal rate from that experience as recorded in Garrison's
11 books in the ordinary course of events. And I were to take
12 that dismissal rate and use it with the Bates White analytical
13 database underlying data to make my forecast, that would be
14 apples and oranges, wouldn't it? It wouldn't fit.

15 A. Yes, I...

16 Q. It would result in double counting some dismissals,
17 wouldn't it? Because the dismissals that would be inherent in
18 my dismissal rate constructed on the May 2011 database would
19 be -- would appear in the questionnaire responses too, right?

20 A. Yes, but I don't understand why will anyone do something
21 like that. I mean, if you had the -- if you had a database
22 that has that right -- the correct dismissal rates, you will
23 also have the database that has the correct, for example,
24 number of pending cases. And then you will apply that correct
25 dismissal rate to the correct number of pending cases to, for

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1 example, get the right number of potentially dismissed cases
2 from those --

3 Q. And if you take an historical database and you apply
4 selectively trumping or overriding procedures derived from
5 exercises like the questionnaire for some purposes but you use
6 the unadjusted historical information for other purposes, you
7 are introducing significant distortions into your analysis,
8 aren't you?

9 A. I don't think that's correct. It all depends on what are
10 the -- what are the factors that you are -- that you are
11 referring to and what is the effect on the analysis. I mean,
12 all of those things certainly have to be reviewed and have to
13 be considered. But it's not -- as a matter of principle, I
14 don't think that's correct.

15 Q. Did Garlock -- strike that.

16 Did Bates White classify as dismissed claims that were
17 reported in the questionnaire process under any other
18 description? For example, if the claimant reported that he
19 didn't have mesothelioma, would Bates White treat that as a
20 dismissed claim?

21 A. No, of course not. Well, I mean, not -- not as a
22 dismissed mesothelioma claim for that matter, obviously. I
23 mean, if -- so let me be clear about the process because
24 there's probably some misunderstanding here.

25 So if we had information about the status of the claim

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1 but the claimant did not say that he did not have
2 mesothelioma, then he will be -- he will remain a mesothelioma
3 claim in the Garlock analytical database and will have a
4 different status. For example, dismissed.

5 Now, if the claimant said these -- I never had
6 mesothelioma or I had lung cancer, then what will have
7 happened is that regardless of whether that case was dismissed
8 or pending, that will have been reclassified as lung cancer
9 and will not be part of the mesothelioma claims calculations
10 any longer.

11 Q. Now, some of the -- I remember from your slide concerning
12 the mesothelioma claim questionnaire responses correspondence
13 from the Angelos firm. In some instances they said Garlock
14 was never joined as a defendant in this case, right? Do you
15 remember that?

16 A. Yeah. Well, I think that there was one or two entries
17 that said Garlock was not named.

18 Q. How did you treat those? Did you dismiss them?

19 A. Those were dismissals, yes.

20 Q. You treated them as dismissals?

21 A. Yes.

22 Q. In fact, they weren't dismissed; they were never brought
23 in the first place, right?

24 A. Well, so they are not -- there are no claims against
25 Garlock.

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1 Q. Now, Bates White also did an analysis, did it not, of
2 particular claimed files to derive assumptions as to the
3 extent to which the pending -- population of pending claimants
4 asserted contact with a Garlock product?

5 A. Correct.

6 Q. And Bates White made judgments about what did and didn't
7 qualify as such an assertion, correct?

8 A. I don't think that's correct. Well, there are two things
9 that I need to say about that.

10 The first thing is that we reviewed all the pending
11 claims that had submitted questionnaires for that matter.
12 It's not a sample. It was basically a census of all the
13 mesothelioma claims that had submitted information through the
14 PIQ.

15 The second -- the second point that I want to make is
16 that the -- we reviewed -- for most of the cases there was
17 just the answer that claimants themselves provided on question
18 9 of Section 5A of the questionnaire, and that wasn't -- there
19 was no interpretation about that.

20 For some individuals who did not respond on the face of
21 the questionnaire but, rather, submitted the documents to
22 supplement their questions, what we did is -- what Bates White
23 did is basically go through those documents, identify any
24 instance in which they had mentioned Garlock gaskets as a
25 potential source of exposure, and then record whether they

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1 had -- what was the way in which they had been in contact with
2 gaskets.

3 Q. Now, you're aware LAS did that as well. Conducted an
4 exercise to examine actual files to observe the rate at which
5 claimants in their claim materials, their PIQs and so forth,
6 actually asserted contact with a Garlock product. You're
7 aware of that?

8 A. Are you referring to the analysis that Dr. Peterson
9 reported on in his report?

10 Q. Yes.

11 A. Yes, I am. But I don't think that we are talking about
12 the same thing.

13 Q. My point is both experts undertook an analysis to make
14 observations about the extent of the identification of Garlock
15 products in their questionnaire materials.

16 A. That's correct.

17 Q. Okay. Now --

18 A. On my rebuttal report I covered that subject. We didn't
19 present it today, but I can point to you what are the issues
20 with the analysis that Dr. Peterson performed.

21 Q. And they disagree, correct? You say they counted too
22 many. They say you counted too few. Right?

23 A. Yeah. We can show in the data why it is that we think
24 that --

25 Q. Now, let's suppose you're right. This is just for the

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1 sake of discussion. Let's suppose your analysis of that is
2 right. You observed the extent to which claimants didn't
3 identify in their questionnaire materials or supporting
4 documents contact with Garlock products. How did you treat
5 those claims?

6 A. Which claims, excuse me?

7 Q. The claims that you determined in Bates White's analysis
8 lacked an assertion of contact with Garlock products.

9 A. Well, how do I treat them?

10 Q. How did you treat them in the database?

11 A. Well, they are identified as such, as not identifying
12 source of Garlock --

13 Q. And you gave them zero value, correct?

14 A. Well, now you're talking about the forecast then. In
15 that case I think that you are talking about Dr. Bates'
16 analysis. And yes, my understanding is that he valued them at
17 zero.

18 Q. Now, we're talking about stayed claims. You know what
19 that means, correct? Claims that are subject to a stay of the
20 bankruptcy automatically flowing from the pendency of the
21 bankruptcy. Meaning those claims cannot go forward unless and
22 until the bankrupt court deals with them or lifts the stay
23 order, correct? Or the automatic stay.

24 A. Yeah, by -- yeah.

25 Q. You're generally aware that these cases have been, in

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1 effect, in suspended animation since Garlock filed bankruptcy.

2 A. I don't know about that. I wouldn't know about that.

3 But, yeah, I think -- I know what you are talking about.

4 Q. You know they haven't been actively litigated or
5 processed since then.

6 A. I don't know -- I don't know that. I mean, I don't know
7 if they had continued against other defendants.

8 Q. I'm sorry, I couldn't understand you.

9 A. If they have continued their case against other
10 defendants. I just don't know.

11 Q. I'm talking about against Garlock.

12 A. Oh, yeah, they are still pending, yes.

13 Q. They're still pending and they're sitting there awaiting
14 action. They haven't been active as to Garlock since the
15 bankruptcy was filed three years ago, right?

16 A. That is correct.

17 Q. Okay. Now, you know from your experience in working
18 around these asbestos matters that it can be very difficult to
19 identify all of a given person's asbestos exposures, correct?

20 A. I don't know what you -- what you mean by that. I mean,
21 I don't have firsthand experience on that. But my
22 understanding is that the main source of the exposure,
23 exposure information is either the -- is the claimant himself.

24 So, I mean, I will expect that he will know what were the
25 occupations and industries where he worked at, what were the

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1 locations where he worked and that will be something that his
2 representative will be able to figure out with no -- with no
3 trouble. But I don't know firsthand.

4 Q. Did you listen to Mr. Glaspy testify earlier today?

5 A. I was not in the room.

6 Q. Have you read his testimony given in this court in March
7 of 2011?

8 A. No.

9 Q. He described the search for exposure evidence is
10 oftentimes a search for a needle in a haystack.

11 A. You are talking about the defense -- the defense
12 attorney. I thought that you were talking about the plaintiff
13 attorney.

14 Q. I'm talking about whoever is doing the searching. It's
15 not necessarily an easy thing to identify all the myriad
16 sources of asbestos exposure that a given worker might have
17 suffered.

18 A. I wouldn't know about that. I told you that I don't have
19 firsthand knowledge of that.

20 Q. But you do have the understanding, don't you, that these
21 cases don't come fully developed when the claimant walks into
22 the lawyer's office?

23 A. I don't know about that either.

24 Q. They're built over time, aren't they? You know that.

25 A. I really don't.

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1 Q. You've seen the interrogatory answers. You've seen the
2 complaints. You've seen the depositions. You've seen the
3 trial testimony in various cases. You see how the cases
4 evolve and are built over time.

5 A. Yeah, I've seen that there are -- for example, in some
6 cases there are multiple interrogatories and multiple
7 depositions. And I've also seen that the additional
8 information that is provided in later interrogatories and
9 depositions is many times not significantly different from
10 what was provided the first time.

11 Q. And it is also true, isn't it, that plaintiffs and
12 defendants commonly postpone their efforts at trial
13 preparation until very close to the time of trial?

14 A. I don't know about that.

15 Q. You're not aware of that. You didn't hear Mr. Glaspy
16 testify to that this morning?

17 A. I wasn't -- I wasn't in the room. I mean, if he
18 testified to that.

19 Q. Now, the record will reflect that in the course of
20 presiding over disputes concerning the questionnaire process,
21 this court made clear that respondents need provide only
22 information already available in the file, correct?

23 A. Yes, I think that's correct.

24 Q. They did not have to engage in further investigation,
25 right?

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1 A. Correct.

2 Q. And they did not have to engage in trial preparation,
3 correct?

4 A. I think that's correct.

5 Q. The court also made it clear that the questionnaire
6 process would not involve in any way any sanction of dismissal
7 of any claim. Are you aware of that?

8 A. No, I am not. I am not.

9 Q. The record will so reflect.

10 Now, assigning zero value to a pending claim in a state
11 of suspended animation under the automatic stay is not very
12 different from treating it as dismissed, is it?

13 A. Well, we are talking about -- now we are talking back
14 about the forecast because --

15 Q. Yes.

16 A. -- first you were talking about specific claimants.

17 Q. I'm talking now about the forecast.

18 A. So that's --

19 MR. WOLF: Your Honor, objection. This is outside
20 the scope of today's direct. He should have asked
21 Dr. Gallardo-Garcia about this last time if he wanted to --

22 THE COURT: Well, hopefully he'll wind it up pretty
23 quickly. Go ahead.

24 Q. Both the dismissal and the treating of a claim as having
25 zero value had the effect of tamping down the estimate, didn't

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1 it? They produce a lower estimate than another assumption
2 would.

3 A. Yeah, but I don't think that that's an assumption. We
4 are talking about facts that were reflected in the
5 questionnaires.

6 Q. Now, you're aware that most of the claimants had died by
7 the time of the questionnaire responses?

8 A. Yes. And even a good number of the -- of the claimants
9 that were reported as deceased actually were able to provide
10 the way in which they were in contact with asbestos.

11 Q. The fact of the matter is that most of them were dead by
12 then, isn't that so?

13 A. I will have to look at the data. I'm not sure that all
14 of them -- most of them were dead, but I will have to look at
15 the data.

16 Q. You understand that the expected life expectancy of a
17 mesothelioma victim upon diagnosis is something on the order
18 of 18 months?

19 A. Yes, I've heard that before.

20 Q. You understand that the questionnaire process took more
21 than 18 months from the beginning of the case to come to
22 fruition in the questionnaire responses?

23 A. Yes, I know that for a fact because I was part of the
24 process.

25 Q. Now, in the ordinary course of litigation outside of

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1 bankruptcy, you know, do you not, that some of those cases
2 that you are treating as of no value because the file does not
3 reflect in your estimation contact with a Garrison product --
4 Garlock product at this particular moment would ripen in
5 litigation into viable claims.

6 A. I do not -- I do not know that and that's not -- you are
7 still talking about an analysis that I did not perform. That
8 was an analysis that Dr. Bates performed.

9 Q. Now, others, I would grant you, would sort of die on the
10 vine and eventually be dismissed. That would happen at the
11 pace of the underlying litigation in the nonbankruptcy
12 processes, correct?

13 A. Yeah. But here we are talking about cases that were
14 dismissed before and that were just not reflected in the data.

15 Q. And both of the --

16 A. We are talking about two different things now.

17 Q. Both of the patterns that I'm talking about, the pattern
18 where an undeveloped case becomes developed, finds evidence,
19 becomes viable, evades dismissal and is either settled or
20 tried; and the pattern, on the other hand, where it comes up
21 empty. Where, like that Belluck and Fox response you put up
22 on the board, the claimant says I'm done. I can't find
23 Garlock ID. I'm withdrawing my claim.

24 Both of those patterns would be detectable in the
25 historical data over time, correct?

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1 A. It's possible, but it will -- it will be necessary to
2 analyze that.

3 Now, that -- again, what we are talking about here is
4 facts. The fact that those claims were dismissed as we saw on
5 the examples and as we can see in all the other documents that
6 were submitted through the PIQ, that's just a fact. That was
7 not reflected in the Garrison Database.

8 Q. No, no, no. You're talking about the unilateral
9 recognition of dismissals from the questionnaire process
10 without a correlative, on-the-other-hand effort to find out
11 falsely mischaracterized or omitted mesothelioma claims. I'm
12 talking about something else now. I'm talking about the
13 treatment of claims as of zero value in the forecast.

14 My contention, Dr. Gallardo-Garcia, is that to some
15 material extent, claims that Bates White is treating as of no
16 value for its forecast would, if processed in the normal
17 course of litigation outside of bankruptcy, ripen into viable
18 claims.

19 A. I don't think that's true.

20 Q. History teaches us that, doesn't it?

21 A. I don't think that's true. The experience that I have
22 with asbestos databases is that most of the settlements -- if
23 a claim is going to be settled, that settlement is going to
24 occur just a couple of years after filing.

25 Q. Well, that may be the predominant pattern. But you are

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1 also aware of some very old claims getting paid at the end,
2 aren't you?

3 A. Some of them, but those are rare.

4 Q. Now, contrasted to the natural processes of the
5 nonbankruptcy litigation, what would have happened if Garlock
6 hadn't sought refuge in the bankruptcy court; contrasted to
7 that, the marking down of claims to zero for lack of evidence
8 at an arbitrary moment selected by the debtor who has an
9 interest in minimizing its estimated liability is not, I
10 submit to you, a fair reflection of how claims are handled in
11 the nonbankruptcy world. Do you accept that?

12 A. I don't think -- I do not. The -- at the time of the --
13 of submitting the questionnaire responses, the youngest claim
14 will have been at least a year and a half old. So I will
15 have -- I will assume that if there was going to be any
16 information that they could gather, they will have had enough
17 time.

18 Now, we are talking about the -- when we are talking --

19 Q. That's your assumption. What's the basis?

20 A. As I told you --

21 Q. Just the age?

22 A. Yeah, because I've seen -- because I've seen in the data,
23 as I said before, that cases that eventually settle are
24 typically settled just a couple of years after filing.

25 Q. And in your estimation, it makes no difference that the

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1 plaintiff has been legally barred from proceeding for three
2 years?

3 A. You are talking about -- again, about Dr. Bates'
4 estimation. You can ask that to Dr. Bates because he actually
5 did an analysis regarding the timing of the claims and to
6 payment and all these things that you are asking about.

7 Q. Okay. Let's switch gears. Let's talk about your
8 criticism of Dr. Peterson for failing to include more than a
9 hundred settlements that occurred in 2010. I take it that's
10 based upon the debtors' February 2013 response to long pending
11 requests from the FCR for information about settled claims,
12 right?

13 A. Some of -- some of those might have come from there.

14 Q. That's the information provided about a week before the
15 expert reports were due, correct?

16 A. That's correct.

17 Q. Okay. Now, you included -- Bates White included those
18 settlements as such in 2010 in its analytical database.

19 A. So many of those settlements actually had -- I believe
20 they had dates. For many of them we had actual dates.

21 Q. Many of them you didn't, right?

22 A. For the -- for a small number of them. If we are talking
23 about the hundred specific cases that you're referring to, I
24 will know how many of those had dates or not, but I will think
25 that a number -- a significant number of them actually had

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1 dates.

2 Q. But none of those claims were recorded as settled in the
3 May 2011 Garrison Database, was it?

4 A. Some of them were.

5 Q. How many?

6 A. I don't know. I will have to go back and --

7 Q. Most of them weren't?

8 A. I don't know. I will have to look at that.

9 Q. Well, why would it be newsworthy of an interrogatory
10 response to report a hundred claims as settled if they were
11 already in the database as settled?

12 A. Well, actually, that's what we found in the database.
13 When we did the analysis on a claim-by-claim basis as opposed
14 to just summing all the cases in one single number as
15 Dr. Rabinovitz did, the -- what we found is that there were
16 actual cases that were already reflected as settled and paid
17 or actually dismissed in the May 2011 database that were
18 listed on those -- on those interrogatory responses that you
19 are referring to.

20 Q. We're talking now about the hundred settlements that
21 you're criticizing Dr. Peterson for not taking account of.
22 But if you relied on the May 2011 database, he would
23 implicitly have taken account of those that had been recorded
24 as settled by that time, wouldn't he?

25 A. Yeah, that's correct. That's correct.

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1 Q. So when you criticize him for omitting the hundred
2 settlements, you didn't do that analysis to figure out more
3 precisely which ones had and hadn't been recorded already as
4 of the May 2011 database?

5 A. Yeah. Well, we basically found those claimants in the
6 database and we identified -- identified them as such.

7 Q. But you criticized him for omitting them, but he used the
8 May 2011 database.

9 A. Yeah, and we used both the -- the May 2011 database and
10 those responses to interrogatories.

11 Q. Okay. And those unrecorded settlements, if that's what
12 they were, had relatively low values, averaging about \$22,000
13 a claim, right?

14 A. Yeah, there were some -- some relatively low value cases.
15 There were some that were relatively high.

16 Q. That's just about a third of the average settlement value
17 that you compute after you make adjustments that we'll get to
18 to the late stage settlement values; isn't that right?

19 A. Yes, those are the settlements. I mean, that's -- that's
20 what the data -- that the data shows.

21 Q. Now, there were also a number of settlements that were
22 reported on the questionnaires that were significantly higher
23 than the average, correct?

24 A. Settlements that were reported in the questionnaires?

25 Q. Settlements -- well, let's -- let's don't muddle the

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1 question. That were reported in those interrogatory responses
2 on Exhibit D: 52 settlements averaging 162,000.

3 A. Right.

4 Q. Those --

5 A. I don't -- I don't know that that's the right average
6 amount, but Exhibit D had the settlements.

7 Q. We'll look at that. But they were comparatively high,
8 correct?

9 A. Well, they were -- yeah.

10 Q. But because Robinson Bradshaw told you that it -- that
11 Garlock wasn't accepting those as settled, you didn't treat
12 them as settled in the database, in your analytical database
13 or even forecast.

14 A. That's not right. You said Exhibit D?

15 Q. D.

16 A. Exhibit D is on unpaid settlements, I think, and those
17 were reflected as such in the database.

18 MR. SWETT: Mr. Walker, can we call up ACC687. Then
19 go to the second to the last page.

20 THE WITNESS: Oh, no, you are right. You are right.
21 Now I remember.

22 Q. Okay. Let's just -- let's just get clear on the record.
23 Exhibit D, the second to last page -- I'm sorry, this is
24 confidential so we won't show it. I'll show it to you,
25 though.

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1 If I may approach?

2 MR. WOLF: We have no objection to you displaying
3 it.

4 MR. SWETT: I have to be consistent.

5 If I may?

6 Q. This is Exhibit D.

7 A. Yes.

8 Q. So Exhibit D listed 52 settlements of a certain status
9 that Garlock disputed.

10 I'm now looking at page 2 of the discovery response where
11 at the bottom the debtors say this. "Plaintiff's counsel also
12 contended that claims listed on Exhibit D are subject to a
13 prepetition settlement agreement. Although debtors did not
14 bring motions against the claimants listed on Exhibit D to
15 compel them to provide a questionnaire, debtors dispute that
16 such claims are subject to a settlement agreement. And, if
17 such claims were presented to the court through the filing of
18 (unintelligible) claim, reserve their rights to fully contest
19 these claims."

20 How did you treat in your database and your forecast the
21 claims -- the 52 relatively high value claims listed on
22 Exhibit D?

23 A. Those will be classified as pending, pending mesothelioma
24 claims.

25 Q. Not as settled but not paid?

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1 A. Correct. Because they are not -- they are contested by
2 the debtors.

3 Q. And what did the debtors tell you as to the basis for
4 that supposed contest?

5 A. I don't -- they didn't say anything.

6 Q. Did you make any inquiry on your own independent of
7 Robinson Bradshaw or of Garrison to find out what it was about
8 those asserted settlements that caused Garlock to dispute
9 them?

10 A. Well, I did not, but my understanding is that it's just
11 that the debtors have no record about those settlements ever
12 having...

13 Q. How did you get that understanding?

14 A. Through Robinson Bradshaw.

15 Q. Now, those settlements all pertain to clients of Belluck
16 and Fox, Simon Eddins, and Waters and Kraus, right?

17 A. Yeah, that's what I saw in the...

18 Q. You're aware that the debtors have been particularly
19 critical of those firms in this estimation trial.

20 A. Yes, I've seen that.

21 Q. Have you ever seen -- well, let's look first at Belluck
22 and Fox.

23 MR. SWETT: Your Honor, I'm afraid that this is
24 going to be very awkward unless we clear the courtroom.

25 THE COURT: Why don't we take a break for lunch and

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1 come back at 2:00, and then we'll do it with the courtroom
2 closed. I'll ask you to try to wind this up as quickly as
3 possible. We're going to quit today at 5:30.

4 MR. CASSADA: I'm sorry, Your Honor, I didn't hear
5 that last statement.

6 THE COURT: I said we'll be back at 2:00. We're
7 going to quit today at 5:30.

8 MR. CASSADA: Okay. Thank you.

9 (Lunch recess at 1:15 p.m.)

10 THURSDAY AFTERNOON, AUGUST 22, 2013

11 (Court called to order at 2:00 p.m.)

12 MR. SWETT: Your Honor, by way of shortcutting this,
13 I figured out a way to do it without displaying documents so
14 we don't need to clear the courtroom.

15 THE COURT: All right. Good. So if anybody is
16 outside, invite them back in.

17 MR. SWETT: Yes, sir. Instead, what I'm going to do
18 is cite forth to the record some documents, lay down an
19 assumption, and then proceed on the basis of the assumption to
20 ask Dr. Gallardo-Garcia a question or two on this subject of
21 the 52 settlements that the debtors listed on Exhibit D as
22 disputed.

23 And the documents I want to refer to with reference
24 to the Belluck and Fox claims on that list, there's ACC720.
25 We have created an excerpt that we will separately tender into

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1 evidence as ACC720A. It's an email from Bernadette Catalana
2 of the Osborn Reed firm representing Garlock. That includes a
3 list that embodies the cases that Belluck and she had agreed
4 to resolve under the matrix agreement of 2010. And I'm going
5 to represent that that list includes each of the claims that
6 shows up on Exhibit D.

7 Then I'm going to refer to certain correspondence in
8 the questionnaire meet and confer process pertaining to those
9 matters, ACC720B, which is a compilation of emails addressing
10 those matters in the questionnaire process.

11 With regard to Simon Eddins, I will refer to ACC237
12 and separately marked portions of ACC721 which we have --
13 which consist of a compilation of emails and letters which we
14 have broken out separately for identification as 721P, as in
15 Peter, 721Q, 721R, 721S, as in Sam. And we'll represent that
16 these include a settlement letter addressing three of the
17 claims listed on Exhibit D, another email addressing a fourth
18 claim that's on Exhibit D, another letter addressing a fifth
19 claim on Exhibit D, another letter addressing at least eight
20 of the Simon Eddins cases listed on Exhibit D.

21 And I'm going to refer to ACC721 which we have also
22 broken out into its constituent parts. It too is a composite
23 exhibit. These consist of releases submitted to Garlock by
24 the Simon Eddins firm for claimants listed on Exhibit D. And
25 the parts I will refer to are 721A, B, C, D, E, F, G, H, I, J,

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1 K, and L.

2 I will also refer with respect to the Simon Eddins
3 firm to ACC921 which is a summary of meet and confer
4 correspondence that is separately identified as ACC721M, 721N,
5 721O.

6 Finally, with respect to Waters and Kraus, I will
7 refer to ACC228 which is a 2006 settlement agreement in letter
8 form, and ACC235 which is another letter agreement, this one
9 extending the existing Waters and Kraus settlement agreement
10 with Garlock into a future period. And will note that Exhibit
11 D to that letter lists cases covered by the settlement
12 agreement and it includes each of the Waters and Kraus
13 claimants who are listed on Exhibit D.

14 I will also refer to correspondence from the meet
15 and confer process in the questionnaire matter, ACC722, and
16 Exhibit A. They are two reflecting Water and Kraus's
17 confirmation that the settlements were agreed to be treated as
18 settled but not paid in the questionnaire process.

19 Q. Now, having regard to those representations -- and I
20 understand I've not shown you the documents. I'm not asking
21 you to take them for granted except for purposes of this --
22 concluding this part of the examination.

23 Would it have made any difference to you in your
24 treatment of the Garrison -- I'm sorry, of the Bates White
25 analytical database or in your forecast to know that there was

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1 substantial documentation available to Garlock that pointed to
2 the conclusion that, yes, indeed, Garlock had agreed to settle
3 each and every one of the cases listed on Exhibit D?

4 A. Well, it will have -- certainly have an effect on the
5 data because that -- if that was really the case that those
6 cases were actually settled and Garlock had accepted those
7 cases as settled cases, then they will have appeared as such
8 in the database with any amount that will have agreed -- been
9 agreed between Garlock and the plaintiffs, yes.

10 Q. But you were given no understanding from Robinson
11 Bradshaw or Garrison as to why Garlock was now taking the
12 position that these settlements shouldn't be accepted as such,
13 correct?

14 A. Yes, I don't -- I don't have information about that.

15 Q. Okay.

16 A. Now, about the forecast. And again, this is a topic for
17 Dr. Bates, but it will have made -- it will have made a
18 difference in the forecast.

19 Q. Now, you understand, sir, don't you, that LAS,
20 Dr. Peterson's firm, accepted neither the 100 settlements that
21 Bates White accepted as settled claims based upon the
22 supplemental information provided in Garlock's discovery
23 response nor did it accept as settled the 52 cases that
24 Garlock treated as disputed settlements except to the extent,
25 if any, that they were reflected in the database as such. Do

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1 you have that understanding?

2 A. Yeah, I think that they didn't reflect any of those
3 settlements in their database.

4 Q. Let's talk about the three verdicts. I believe this is
5 our last subject. You assert that Dr. Peterson erred in
6 treating three verdicts, Puller, Snyder and Wilson, as having
7 been -- as recognizing them in the year 2010 rather than in
8 some prior period, correct?

9 A. Correct.

10 Q. These verdicts were on behalf of the plaintiffs and were
11 returned by juries in 2002, 2004, and 2005, correct?

12 A. Correct.

13 Q. And Bates White accounts for them in the year of the
14 verdict.

15 A. Yes, that's right.

16 Q. But they weren't actually paid in those years, were they?

17 A. No, they were paid a couple of years after.

18 Q. They were paid at various points, all of which fell
19 within the 2006 to 2010 calibration period used by LAS,
20 correct?

21 A. I will have to look at my report, but I don't believe
22 that's true for the three of them.

23 Q. Well, let's look at ACC925.

24 ACC925 is a summary of these verdicts as to information
25 in the database with respect to payment and recoupment

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1 amounts.

2 And as you'll see, the Puller case, the verdict in that
3 case is reflected as paid on October 10 of 2006. Do you have
4 any reason to doubt that?

5 A. No. I mean, that's -- that point's on the table.

6 Q. That's the amount that Garlock paid to the plaintiff
7 pursuant to the verdict, correct?

8 A. Correct.

9 Q. And then below that we have a listing of a series of
10 smaller transactions with negative numbers, and those are each
11 an entry to reflect a payment received by Garlock from a trust
12 by way of offset against the amount paid on the verdict,
13 right?

14 A. I don't know about every single entry of those, but,
15 yeah, that's my understanding. It will be adjustments to the
16 initial amount.

17 Q. And the last of those offsets that came in was collected
18 on June 29, 2010, correct?

19 A. Correct.

20 Q. Now, you understand that Garlock recorded -- or Garrison
21 recorded each of those transactions in the payment field of
22 the Garrison Database.

23 A. Yes, I think that -- yeah, this is what -- what seems to
24 be the case that this looks like, an excerpt of the Garrison
25 Database, yes.

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1 Q. And likewise with Herman Wilson, the summary indicates
2 that it was -- the verdict of a million eight and change was
3 paid on January 24, 2006, correct?

4 A. Yes.

5 Q. You have no reason to doubt the accuracy of that?

6 A. No. I mean, that's part of the table.

7 Q. Then we have the offsetting collections putting to a net
8 total, correct?

9 A. Correct.

10 Q. So that the impact of recording these transactions in
11 this way was to allow Garrison to track the net cost of that
12 verdict to Garlock, all things considered, right?

13 A. Correct.

14 Q. And then Snyder likewise, it indicates here the plaintiff
15 received payment of the verdict on April 5th of 2007, correct?

16 A. Yeah. Yes.

17 Q. And offsets came in up to June 29, 2010, correct?

18 A. Correct.

19 Q. Were applied against the payment amount of the verdict,
20 producing net sums reflecting what Garlock paid out net
21 pursuant to that verdict, correct?

22 A. Correct.

23 Q. Each of the main transactions, the payments to the
24 plaintiffs, took place in 2006 or later, correct?

25 A. The actual payments, yes, but not the verdicts.

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1 Q. And 2006 is the beginning of the calibration period used
2 by LAS.

3 A. Yes, but that's incorrect. Dr. Bates explained that in
4 his procedure when you asked these same questions. And the
5 point here is not whether -- not when the verdict was paid,
6 but whether -- when was the event that occurred.

7 Q. You're skipping ahead. Stick with me for a minute.

8 A. Okay.

9 Q. The calibration period used by LAS began in 2006 and went
10 through 2010, right?

11 A. Correct.

12 Q. And both the first and last transactions recorded by
13 Garrison in the payment field for each of these three verdicts
14 took place within that span of time, correct?

15 A. Correct.

16 Q. So you are aware, are you not, that a verdict rarely if
17 ever constitutes the last event before payment of a claim.

18 A. Well, sometimes I know that it's a bill, but the -- but
19 the amounts -- if the bill is not received, the amounts are
20 usually very close to what was the amount of the verdict.

21 Q. Well, the verdict is when the jury comes back and gives
22 its award, right?

23 A. Yes.

24 Q. And then there follows a molding of the judgment where
25 any settlement credits are applied or interest added or

JORGE GALLARDO-GARCIA - CROSS

1 whatever other arithmetic adjustments the court deems
2 appropriate to the verdict award, correct?

3 A. Yes. That's my understanding, yes.

4 Q. And there is a time for noting an appeal, correct?

5 A. Yes.

6 Q. And Garlock always appealed, didn't they?

7 A. I don't know about that.

8 Q. You are certainly aware that Garlock's usual practice
9 when faced with an adverse verdict was to pursue an appeal.
10 It says that in the 10Ks. You're aware of that?

11 A. Well, I've seen the 10Ks, but I don't have recollection
12 of that.

13 Q. And you're also aware that oftentimes settlement
14 negotiations followed the rendering of a verdict, correct?

15 A. That's correct, yeah. I know -- I know about those.

16 Q. And when any of those things is going on, the amount that
17 the defendant will pay pursuant to the verdict remains
18 undetermined, correct?

19 A. Well, it's not completely undetermined because there is
20 an award that's been already -- there is an amount that's been
21 already awarded, so there is the -- the amount is usually
22 similar to those -- to the initial verdict amounts.

23 Q. But there is no payment when the jury comes back and
24 announces its verdict.

25 A. No.

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1 Q. That requires a passage of time and many events
2 intervening, correct?

3 A. Yeah, that's correct.

4 Q. Okay. Now, you understand that LAS is projecting what
5 the debtor -- forecasting what Garlock would pay to resolve
6 asbestos claims if it were not in bankruptcy, correct?

7 A. Yeah.

8 Q. You call that an expenditure forecast.

9 A. That's correct.

10 Q. Because it's keyed to payments, right?

11 A. (No response.)

12 Q. Now, given that that is so, it's eminently reasonable,
13 isn't it, to take account of a verdict at some date related to
14 payment.

15 A. I don't think it is. And as Dr. Bates explained in
16 his -- in his deposition, if you include the verdict in a
17 period of time where the payment occurred, the impact of
18 the -- the behavioral impact on other settlements is already
19 reflected on the other settlements. So you're basically
20 double counting the effect of that verdict. But he can
21 explain it better than I.

22 Q. We could either -- we could accept LAS's approach of
23 recognizing the net payment where it actually appears date
24 wise in Garrison's database or we could say, well, the largest
25 transaction and the first transaction are the ones that we

JORGE GALLARDO-GARCIA - CROSS

1 could reasonably relate the verdict to payment in and that
2 would still be within the calibration period.

3 So whichever of those two choices we make, and I
4 appreciate that Dr. Bates doesn't agree with either of them,
5 but when we make either of those choices, we do not affect the
6 settlement averages produced by using that calibration period,
7 correct?

8 A. Well, no, it will not affect them. But again, that will
9 be wrong.

10 Q. Okay. Now, from time to time Bates White had to make a
11 choice as to a settlement that was paid out in installments.
12 And the choice had to do with when to recognize the settlement
13 in the data, correct?

14 A. Correct.

15 Q. And in those instances, it was Bates White's practice,
16 was it not, to recognize the settlement as of the date of the
17 largest installment?

18 A. That's correct.

19 Q. Now, the LAS forecast speaks as of June 2010, the
20 petition date, correct?

21 A. Yes.

22 Q. So if LAS had chosen not the last payment in the series
23 but the first payment in the series for each of those verdicts
24 back in 2006, 2007, it would have to have rolled those numbers
25 forward by way of an inflation adjustment so that they would

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1 speak as of June 2010 in its forecast, correct?

2 A. I don't know how they done their analysis.

3 Q. But if they did make such an inflation adjustment, there
4 would be a small increase in the numbers, right?

5 A. If they have assigned those amounts to the -- to prior
6 years and the inflation adjustment was positive, yes.

7 Q. But they didn't do that, did they?

8 A. No, it doesn't appear.

9 Q. They just took the numbers straight out of the Garrison
10 Database, correct?

11 A. Well, not straight out of the Garrison Database. As you
12 showed here, they basically made this assumption of putting
13 all the payments or the balance of the payments on the last
14 date.

15 Q. Well, we've already established that it wouldn't have
16 made any significant difference if they had taken the first
17 date from the standpoint of calculating their settlement
18 averages resulting from their calibration period, correct?

19 A. Yeah, if you are just taking into account those dates as
20 opposed to the verdict date, yes.

21 MR. SWETT: Okay. Thank you, doctor.

22 THE WITNESS: You're welcome.

23 THE COURT: Mr. Guy.

24 CROSS EXAMINATION

25 BY MR. GUY:

JORGE GALLARDO-GARCIA - CROSS

1 Q. Dr. Gallardo-Garcia, my name is Jonathan Guy. I
2 represent the future claimants representative, Mr. Grier.

3 The answers to the questions Mr. Swett posed to you
4 concerning the assignment of those three claims and the
5 calibration period, understanding that Dr. Rabinovitz's
6 calibration period was 2005 to 2010, your answers would be the
7 same, correct?

8 A. Yes. If they had correctly assigned those amounts to the
9 payment dates, yes.

10 Q. Now, Dr. Gallardo-Garcia, you're not taking any issue
11 with the first step in Dr. Rabinovitz's process of the
12 first -- of the six steps, correct? The one where she
13 estimated the size of the population exposed to asbestos.

14 A. You're going to have to give me more details. I don't
15 know what you are referring to, I'm sorry.

16 Q. Do you remember reading Dr. Rabinovitz's report?

17 A. Yes.

18 Q. Do you remember the six steps? We can maybe put them up
19 on the screen.

20 You were here for her testimony in court, correct?

21 A. Yes.

22 Q. And I just want to be clear for the record what it is
23 that you're disagreeing with as to Dr. Rabinovitz.

24 You're not disagreeing with the first step, are you?

25 A. To be honest, I will have to look at the -- I'd

JORGE GALLARDO-GARCIA - CROSS

1 actually -- what she actually did. I don't -- by looking at
2 this slide, I cannot tell you.

3 Q. Okay.

4 A. If you are talking about the incidence model perhaps.

5 Q. Yes.

6 A. Well, I do know that the incidence model she used is
7 wrong because we've estimated that incidence model. Dr. Bates
8 has done that, and he has --

9 Q. Dr. Gallardo-Garcia --

10 A. -- different estimates.

11 Q. -- I'm sure Dr. Bates has lots to say about that. I'm
12 focusing on what you are taking at issue with Dr. Rabinovitz's
13 report.

14 The one that you're focused on is number four, isn't it?
15 The value of the pending claims, right?

16 A. No. It's the number -- let's see.

17 Q. Let's eliminate them. You're not --

18 A. Well, actually, yeah -- well, I'm -- I mean, you could
19 say that the mistakes she has in her data will affect several
20 of them, two, three, and four.

21 Q. All right. Let's break it down.

22 You can take that down.

23 The impact of the errors that relates to the settled but
24 disputed claims is \$10 million, isn't it?

25 A. Yes. It's very small.

JORGE GALLARDO-GARCIA - CROSS

1 Q. How much has Bates White spent on this case?

2 A. On the whole case?

3 Q. Yes.

4 A. I guess -- I don't have an exact number. But probably
5 \$13 million.

6 Q. And counting.

7 Now, the impact of this issue, the PIQ data not being
8 incorporated in the May 2011 database, is \$80 million, right?
9 By your calculation.

10 A. Well, that's by Dr. Bates' calculation. I don't have his
11 report in front of me, but...

12 Q. You're not saying that he's wrong, are you?

13 A. No. No.

14 Q. Okay. So let's take the \$80 million.

15 You understand that Dr. Rabinovitz's report relies upon
16 the historical data, right?

17 A. The Garrison Database.

18 Q. Yeah. And you're not -- you're not taking at issue with
19 the fact that the historical database showed claims that were
20 paid and the amounts that were paid on those claims, right?

21 A. Correct. What -- you're talking about the settlements?

22 Q. Yes.

23 A. Correct.

24 Q. And you're not -- you're not taking at issue with the
25 Garrison Database the fact that it showed a propensity to sue

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1 too, correct?

2 A. Correct. Although, if I -- I mean, if we are going to
3 talk about mistakes, when Dr. Rabinovitz doesn't recognize
4 that there are -- there is a number of cases that are not
5 mesothelioma in the Garrison Database when she calculates the
6 propensity to sue, that will have --

7 Q. No, no, no.

8 A. -- an increasing effect on her estimates.

9 Q. I'm talking about cases that were paid where there's a
10 settlement. We saw it from Mr. Glaspy. There's a
11 mesothelioma claim. There's an acknowledgment of exposure.
12 The database shows all of that, doesn't it?

13 A. Right. But you asked about propensity to sue.

14 Q. Right. I'm just trying to break it down for the court,
15 the \$80 million. We've dealt with the \$10 million, and the
16 other issue you raised is an \$80 million issue.

17 Now, you would agree with me, sir, would you not, that
18 Dr. Rabinovitz's model recognizes that cases that were
19 dismissed against Garlock necessarily reflects that of the
20 pending claims, a number of those claims, something in excess
21 of 40 percent would be dismissed, correct?

22 A. Yeah, but there are --

23 Q. Yes.

24 A. -- dismissals -- yes.

25 Q. Right. So her model recognizes that there will be a

JORGE GALLARDO-GARCIA - CROSS

1 dismissal of a large number, 40 percent or so, of the pending
2 claims, right?

3 A. Yeah, that's what she calculated.

4 Q. So by saying, well, now in 2013 we have this new data and
5 we are going to then apply it to the database from 2011, and
6 say, well, this one was actually dismissed. Her model,
7 because it reflects an historical dismissal rate, already
8 incorporates that, doesn't it?

9 A. No, that's not correct.

10 Q. All right.

11 A. In that case the problem is that she's basically double
12 counting because there is a dismissal rate that is the actual
13 dismissal rate based on the actual data that exists and then
14 the number of dismissals that you will have in the -- that
15 existed before 2010.

16 So this is not new data. We are talking about the data
17 that was provided by the plaintiffs or their representatives
18 through the PIQ, right? These cases were, as far as I
19 understand, dismissed previously and they are just not
20 reflected in the data.

21 So now, if you use those cases to -- if you update the
22 data, understand what you are going to have is a correct
23 dismissal rate rather than accounting for -- the model
24 accounting for those dismissals in the future.

25 Q. Dr. Gallardo-Garcia, if the data that the debtors have

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1 recognizes over an extended period of time a dismissal rate,
2 and then that is applied to the 3,000 plus pending claims,
3 claims that are likely to be subject to dismissal would then
4 be kicked out, wouldn't they?

5 A. Yes, but --

6 Q. Thank you.

7 A. -- a portion of the ones that will be classified using
8 this calculation that you're talking about as settled will
9 have been dismissed anyway because we know from the actual
10 data that they were actually dismissed.

11 Q. Yeah, I think everybody understands it.

12 Dr. Gallardo-Garcia, do you remember the total number of
13 future claims that Dr. Rabinovitz forecast?

14 A. No, I don't.

15 Q. I represent to you I believe it was 21,389.

16 Do you know the total number of claims, future claims
17 that your colleague, Dr. Bates, forecast?

18 A. On the order of 20 something thousand.

19 Q. I think it's 28,402. And then he applies this, well, I
20 think a lot of them aren't going to be good claims so I'm
21 going to unilaterally kick them out. But in terms of the
22 total claims, his number is about 20 percent -- 25 percent
23 higher than Dr. Rabinovitz's, isn't it?

24 A. Yeah, based on the numbers you just gave me.

25 Q. So if Dr. Rabinovitz were actually to use your forecast

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1 for future claims, her forecast would be significantly higher,
2 wouldn't it?

3 A. Well, I wouldn't know how she would use the -- you are
4 talking about using the Bates White incidence model --

5 Q. Yes.

6 A. -- in this case?

7 Q. Yes.

8 A. Well, if she did -- if she used the same data that has
9 too many -- that doesn't account for the dismissals that we
10 know are dismissed and she counts all the other mathematical
11 errors that she has, she will probably come up with a higher
12 number.

13 Q. Yeah, and it would be hundreds of millions of dollars
14 more, wouldn't it?

15 A. I wouldn't know about that. I would have to do the
16 calculation.

17 MR. GUY: I have no further questions, Your Honor.

18 THE COURT: Okay. Mr. Worf, anything else?

19 MR. WORF: Very brief, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. WORF:

22 Q. Dr. Gallardo-Garcia, Mr. Swett was talking with you about
23 the analysis that Bates White did of claimants' responses to
24 question 5A in the questionnaire about contact with Garlock's
25 asbestos-containing products. Do you remember him asking you

JORGE GALLARDO-GARCIA - REDIRECT

1 about that?

2 A. Yes, I do.

3 Q. That analysis did not enter into your critique of
4 Dr. Peterson and Dr. Rabinovitz that you presented today,
5 correct?

6 A. No, that's -- that's a different -- a different topic.
7 What this slide shows is just the -- the number of pending
8 mesothelioma cases that exist in the database after
9 reclassifying the cases where the claimants said that their
10 claim had been dismissed. This chart does not have
11 relationship with whether claimants were exposed or not.

12 MR. WOLF: Thank you, Your Honor. No further
13 questions.

14 THE COURT: You can step down. Thank you.

15 THE WITNESS: Thank you.

16 (Witness stepped down.)

17 MR. CASSADA: Your Honor, Garlock calls Dr. Charles
18 Bates.

19 Your Honor, we've -- by our calculation, we have an
20 hour and 50 minutes for Dr. Bates and we will move with
21 efficiency and due speed to accomplish that.

22 THE COURT: All right.

23 MR. CASSADA: And we will accomplish that. An hour
24 and 50 minutes will certainly handle it.

25 CHARLES BATES,

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1 being first duly sworn, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. CASSADA:

4 Q. God afternoon, Dr. Bates. I believe you previously
5 introduced yourself to the court so we'll jump right into
6 things.

7 A. Good afternoon.

8 Q. You were present in the courtroom when Drs. Peterson and
9 Rabinovitz testified?

10 A. Yes, I was.

11 Q. And when they presented their estimation opinions?

12 A. Yes, I was.

13 Q. Have you considered their testimony?

14 A. Yes, I have.

15 Q. Have you studied and considered their written materials?

16 A. Very much so.

17 Q. Is there anything in their testimony or presentations
18 that affects your -- the opinions that you previously offered
19 the court?

20 A. I've looked at what they had to say. I've considered the
21 lot. A number of them are issues which I had considered in
22 the work that I had been doing. So I considered them very
23 carefully. And there is nothing that they said which
24 basically leads me to change any of the opinions to which I
25 have reached.

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1 Q. And you have actually reviewed and critiqued their
2 opinions, their estimation opinions; is that correct?

3 A. I have.

4 Q. And you've prepared a written report explaining your
5 criticisms and errors you found in their reporting?

6 A. Yes, I have.

7 Q. And you have before you a document that is marked as GST
8 Exhibit 997.

9 A. Yes, I do.

10 Q. And this is a copy of your rebuttal report.

11 A. Yes, it is.

12 MR. CASSADA: Your Honor, we move to admit
13 Dr. Bates' rebuttal report on the same basis as previous
14 reports for Rule 104 purposes.

15 THE COURT: We will admit those.

16 MR. SWETT: No objection on that basis.

17 THE COURT: Thank you.

18 (Debtors' Exhibit No. 997 was received into
19 evidence.)

20 Q. Dr. Bates, would you please describe the differences in
21 what you did and what Drs. Rabinovitz and Peterson did, both
22 in terms of the object of your estimation and your
23 methodology.

24 A. Sure. Would it be all right if I step down so I can
25 point?

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1 THE COURT: Yes.

2 (Witness stepped down.)

3 THE WITNESS: So I think, Your Honor, I think the
4 diagram that we used for the law and economics model that we
5 developed I think helps mostly.

6 I think the -- essentially the estimates before the
7 court are starkly different. And in particular, which the
8 model which we developed which related how liability is
9 related to the elements that make up the defendant's highest
10 offer, settlement offer, as well as the lowest amount that the
11 plaintiff would be willing to exceed -- accept essentially
12 shows the relationship between where the liability is which we
13 believe, according do the debtors' hypothesis about how the --
14 what is payable under -- what they owe under the bankruptcy
15 code is one thing which is distinctly different from the
16 amount that we paid as an expenditure. The difference between
17 those is accounting for both the defendant's and the
18 plaintiff's costs and the structure of that.

19 Q. And in addition to actually estimating different things,
20 did you employ different methodology?

21 A. We did. I think that it is clear from the presentation
22 that's gone on here, certainly is clear to me and certainly is
23 clear from the presentation of Dr. Heckman, that we presented
24 a coherent integrated model; that we basically used a
25 scientific method in what we were doing and how we did it.

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1 And as near as I can tell, neither Dr. Rabinovitz nor
2 Dr. Peterson have any coherent model, theoretical,
3 quantitative or otherwise, that relates settlements to
4 liabilities and costs. I think that's one of, I think, my
5 most significant criticisms of what it is that they have done
6 is they raised a number of issues, a number of them are very
7 important issues, but there is very little in the way of
8 quantitative analyses, real serious hypotheses testing, using
9 a statistical analysis to test what it is that they assert.
10 We've seen several examples of that in the court today.

11 Q. Okay. And you were here during the testimony of
12 Professor Heckman.

13 A. I was.

14 Q. Did you use reliable and established statistical and
15 economic -- econometric methods in your work?

16 A. I did. And throughout my presentation today, Your Honor,
17 I have put in some of the empirical -- the results that come
18 out of the actual statistical software that we used on this.
19 I don't intend to spend any time with this unless you have an
20 interest in me going into any details of them. But I want to
21 just illustrate the kinds of things that we used that are
22 reflective of the kinds of critiques that Dr. Heckman referred
23 to as the kinds of statistical procedures that should be used
24 in proper statistical analysis, proper quantitative analysis.
25 And so I've put those in those and they will be in the

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1 reports.

2 If at any time in my presentation today I tend to go over
3 things rather quickly because of the limited time, if there is
4 something that needs more clarification, please, Your Honor,
5 stop me and I'll answer your question and address that point.

6 Q. Accepting that Drs. Peterson and Rabinovitz measured a
7 different thing, expenditures, have you considered whether
8 they've done that reliably?

9 A. Yes, I have.

10 Q. And have you identified and quantified errors in their
11 analysis and opinion?

12 A. I have. I have laid out in the table that's in front of
13 us on the screen right here as essentially a form of which was
14 used by Mr. Guy in his cross examination with Dr. Rabinovitz.
15 These lay out the errors that we've identified and the impact
16 that they have on their estimates.

17 And I think between the relationship in considering the
18 way in which they handled these items and then relationship to
19 these issues, between them you can basically reconcile
20 essentially between the estimates that they gave as well as
21 the financial forecasting estimates that we did for Garlock
22 which were expenditure estimates as well, including the
23 liability estimate that we did in our direct work here.

24 Q. So for purposes of the record, we're referring to slide
25 number 5 and we have -- on that slide you set forth nine

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1 discrete errors.

2 A. Correct. We've identified the errors in terms of
3 categories, nine categories which lay them out. The first
4 eight of them essentially are direct applications of the
5 methods they did.

6 The last, what I would consider to be methodological
7 errors in even what they were trying to do, the last one is a
8 difference in interpretation about how you should account for
9 the information that is becoming available and what I think is
10 happening in the tort system out there more broadly.

11 The kind of things that I tried to account for in the
12 financial reporting estimate that we did as well with the
13 available -- the expected upcoming trust that would be --
14 which, frankly, were delayed beyond what we thought would
15 occur and showed up -- only began paying claims on a
16 contemporaneous basis only late in the decade of the 2000s.

17 Q. Okay. Well, we'll review each error.

18 Turning to the first error. Would you please describe
19 what that error is and what impact it had on the estimate.

20 A. Well, this was -- within Dr. Rabinovitz's estimates she
21 includes payments to defense lawyers. I am not sure why she
22 did that. I listened to her explanation of that.

23 The one error -- one element of that would potentially
24 add some basis -- if we switch to the next slide, you can see.
25 Was she referred to it as being in some sense a proxy for what

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1 would be costs if you operated Garlock's payments in a trust
2 instead of in the tort expenditures -- in the tort system.

3 For that purpose, first of all, I don't -- my
4 understanding is it's not an appropriate consideration for
5 this forum about the estimation of the liability or even if
6 you considered the expenditure to mesothelioma claimants.

7 On the other hand, if you want to consider what the
8 expense should be in operating a trust, we did that in terms
9 of our analysis of Garlock's -- their plan of reorganization
10 Garlock put forward. We included trust expenditures in there.
11 It's much, much less. She considered an amount that's an
12 amount almost 35 percent of what would be the total amount of
13 her forecast for that purpose.

14 In fact, if we just simply go out just as a point of
15 reference and look at the bankruptcy trusts that are currently
16 operated out there and the 524(g) trusts that are operating
17 out there right now, their operating expense level is closer
18 to 7 -- 6, 7 percent of their total expenditures, not 35 -- of
19 the assets, not 35 percent.

20 Q. Okay. So we're referring now to slide 7. And this
21 demonstrates that a debtor's prepetition defense costs are not
22 a proxy for the costs of a trust.

23 A. They would not be. There's considerable less expenses
24 associated with operating that. The burden of you no longer
25 trying to obtain a lot of information through the tort system,

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1 through discovery. Rather, it's incumbent upon the plaintiff
2 to present that information, which had a lot to do with why we
3 valued the trust the way we did with regard to the plan of
4 reorganization.

5 Q. Okay.

6 A. On the basis of that, you would have reduced her
7 expenditure, which she said was very nearly the same as
8 Dr. Peterson's, by \$320 million.

9 And on that basis, when you compare the two, as you can
10 see on the next slide, they still would be -- there would be
11 considerable difference between the two. One would be about
12 75 percent of the other.

13 Q. Okay. And your next error, turning to slide 8, is value
14 contested settlements as pending. I believe we heard a little
15 bit about this.

16 A. We've heard quite a bit about that so let's just do that
17 very briefly. Just flash to the next slide.

18 I think that it's just the issue of how you treated them
19 and whether you treated them as pending claims or whether you
20 find them at the value that they had.

21 I think one point that I would make about the valuation
22 of these claims is if you're going to take a pool of the
23 pending claims, however they are, and extract from them a
24 group of particularly high valued claims out of them and
25 assign them in separate values, that's a procedure you can do.

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1 And you can certainly, and I've done this in my forecasts
2 a lot, which is to segment claims into appropriate buckets and
3 assign the valuation characteristics to them that are
4 appropriate for them. And we're going to talk about some
5 cases where that should have been done in more detail here by
6 Dr. Peterson and Dr. Rabinovitz.

7 But if you do that, you better reflect the fact that the
8 claims that you have left over are of lower quality and would
9 have been paid on average less. And so you would at least
10 need to adjust the other side of those claims down.

11 So it's not the fact that you valued one group of claims
12 different than another because they might be of different
13 value characteristics to them, but you can't apply the blended
14 outreaches if they were all in there to one group after
15 already having taken out the high value claims. Otherwise,
16 you're double counting the value of those claims. You need to
17 account for that, which she didn't do.

18 Here we simply treat the entire group of them in the same
19 way as pending claims. Then the net effect of that, the
20 combination of the various things here, first including SBND
21 claims which are valued and are accepted by the debtor.
22 That's simply set aside and treated in a different class of
23 claims and outside the scope of this forecast.

24 Once you account for those, it's a \$10 million effect.

25 Q. And this is an issue that pertains to Dr. Rabinovitz's --

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1 A. Yes.

2 Q. -- testimony?

3 The third error is eliminate spurious trend. Is
4 spurious -- is the term "spurious" a term that has meaning to
5 an econometrician?

6 A. Yes, absolutely. I mean, trends and spurious trends, the
7 distinction between a real trend and a spurious trend is
8 something that's well understood and studied by
9 econometricians and has been for a long time.

10 There's lots of literature relating to using sort of
11 numerical procedures to simply extrapolate what are apparently
12 numerical trends and data going forward, and it's something
13 that the amateur stock pickers try to do all the time. They
14 just simply look at a time series of data and say, oh, that
15 means the data is going to go this way. That's -- that's a
16 fallacious procedure. It's well-known that that leads to
17 spurious results as Dr. -- Professor Heckman mentioned in his
18 testimony here.

19 It's really -- when you're going to examine something --
20 data of that sort, you really have to look at the underlying
21 mechanism which caused the data to change, that caused the
22 observations to change the way they are. It just is not
23 appropriate.

24 In particular, in this case, when Dr. Peterson justified
25 adding a 4-1/2 year trend that he saw in the period of the

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1 data on the basis, and the only explanation that he gave for
2 it was that he found the results implausibly low.

3 Well, if he had the number that he thinks he needs to
4 reach, then what's the purpose of the model? I mean, the
5 model is what is to tell you the number. You don't look at
6 the model and say, well, I don't like that result so let's do
7 something to make the number bigger, which is what he said in
8 his report he did.

9 He has provided no theory on why that trend is there.
10 And I think that in particular, it's not as if each one of
11 these time series of variables is an independent variable.
12 It's related to the other parts and parameters of the model
13 that he's estimating as well and the interrelationship between
14 them matters.

15 Whereas, he's treating them in this way -- and, frankly,
16 Dr. Rabinovitz does this too -- is treat the parameters in the
17 models as if they were independent factors to be estimated
18 separately instead of taking account of the relationship
19 between the variables that's -- that a well defined, coherent
20 model would give you.

21 In this particular case, if we go to the next slide, this
22 just is a chart out of my report using the propensity to sue
23 numbers that Dr. Peterson had in his report. In particular,
24 there's a couple things I want to point out about this.

25 The trend that he winds up using to extend the values is

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1 the red line. Doesn't actually just extend it in this way.
2 What he did was he actually took the average from the period
3 of 2006 to 2010. Which, by the way, this is an average.
4 These percentages over here are percentage of the incidence of
5 disease. So we call that concept propensity to sue as we've
6 talked about here. So the fraction of the incidence of
7 disease that brings a claim against Garlock, whether it's to
8 be paid or not, it's just bringing a claim.

9 He's measured that ratio based on the number of claims
10 filed to the number of claims diagnosed in that year. Those
11 are not quite the same thing. They can be different depending
12 on the time. But he's taking an average across this period.

13 And then he takes the trend line that he gets from the
14 slope from going from 2006 to 2010 and then extends it upward.
15 So essentially, starts from about the point where the black
16 line is there and extends it upward according to this line.
17 And I'll show you that picture in a moment.

18 The point with this slide is that he's picked a
19 particular period of time from 2006 to 2010. There's no five
20 year period in this period where the trend continues beyond
21 that point much at all. If you had just simply taken the
22 period going back just a few years, it would have been flat.
23 If you had gone before that, the five year trend would have
24 looked like it had gone down.

25 None of those are appropriate things to do on the basis

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1 of just looking at these ten numbers or five of those ten
2 numbers and just saying there's a pattern there you should
3 use.

4 Q. So just to be clear, this propensity to sue and what
5 Dr. Peterson was forecasting here was an increasing percentage
6 of people every year diagnosed with mesothelioma who would
7 bring a claim.

8 A. Certainly.

9 Q. And you talked about the interrelationship between
10 variables. What does slide 13 show?

11 A. Well, this is another trend. This is taking a graph -- a
12 set of numbers, it's a table of numbers that's on his report
13 as well, and just simply putting them on a bar chart to see
14 it.

15 I mean, this showed a very clearly distinctly downward
16 pattern. I'm not suggesting this is a trend that one ought to
17 extrapolate at all. What I'm just saying with this, if you
18 just looked at the numbers on this basis and say, oh, here's a
19 trend, this would be a downward slope.

20 Now, we've seen from the slide that Mr. Swett used in
21 cross examination of Dr. Gallardo-Garcia here that, you know,
22 it's probably the result of some activity that took place with
23 regard to Garrison's activities in cleaning up the database
24 and getting old mesothelioma claims put as dismissals which
25 has brought these rates down. It's also had the impact of why

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1 this particular bar is particularly low.

2 So looking just one level below the surface, it leads you
3 to say, well, I don't think I should necessarily believe this
4 trend as being something that I should continue. That's the
5 kind of thing you need to do in doing this kind of analysis.
6 You have to look below the surface and find out what is
7 causing the pattern to change if you wanted to do anything
8 with that pattern. It's just not simply a matter of just
9 extrapolating the pattern.

10 Q. Does 14 show a relationship between propensity to sue
11 and --

12 A. Right. And this reveals the effect of having the
13 combination of the two.

14 This is a graph of the number of claims that are resolved
15 in each year. Down at the bottom is resolution here. The red
16 bars are the number of claims that are paid. The blue bars
17 are the numbers of dismissals on the data.

18 And as you can see here that a couple of things come out
19 from the charts that Mr. Swett showed. You can see the
20 relatively larger bars in blue in 2010, 2009, and 2005. But I
21 think what's important for the chart for the purpose that
22 we're talking about is Dr. Peterson has extended a trend
23 upward of the propensity to sue. He says there's going to be
24 more claims and we're going to project that forward. He's
25 kept the payment rate constant.

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1 But in doing that, what he's saying is that I'm going to
2 project an increasing number of claims to be paid, or at least
3 a nondeclining number of cases to be paid depending on how
4 steep of a slope he set going up.

5 In fact, what we can see from the data historically,
6 there's actually -- the most claims that were paid by Garlock
7 were, in fact, in the past prior to the time period where that
8 propensity to sue increased the way Dr. Peterson talked about.
9 In fact, the number of pending claims has been gone when
10 that's the pattern we would actually expect to see more
11 generally with the change in the incidence of disease and the
12 change in the composition in line with the number of people
13 who would have -- be able to make product ID with Garlock
14 products because of the beginning to decline number of people
15 with mesothelioma from occupational sources in the population.

16 Q. How did Dr. Peterson respond to this criticism which you
17 pointed out in your rebuttal report?

18 A. Right. Well -- okay. We can -- we can talk about it
19 first a little bit. But this was a chart that he presented
20 here in court. And this is what I was talking about here.
21 This black line starts here and moves up. It's the one that
22 how he increases the propensity to sue. So where I had the
23 bars, he has this kind of wire line here. The percentages are
24 the same.

25 And what he's showing you is the procedure that he used

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1 which was take the average from this period, start it from
2 here and move upward.

3 He then presented this graph and said, well, you know,
4 there's nothing wrong with that trend because that trend
5 doesn't go up anymore. If I did all of these other things, I
6 would get a higher trend. Well, that's caused not by looking
7 at the trend he picked. This is not a test of the trend.
8 It's a test of where he started out the -- started out the
9 forecast.

10 So in all of these, he hasn't just put a different trend
11 in. For all of these, he basically changed the starting spot.

12 So the fact is, of course you're going to get higher
13 numbers. If you had just done all of these same trend slopes
14 and put them at the same point, every other one of them would
15 have been less, not higher. So it's not a true test of what
16 it was he said it was.

17 Q. Now, he had a propensity to sue projected for 2010. Was
18 that based on real data?

19 A. Yes. It's based on -- it's his measured data -- oh, for
20 2010 itself. Well, that's a different factor. If you go back
21 to the two charts for just a second.

22 Q. This?

23 A. This one right here.

24 One of the things you'll notice about this is 2010, it
25 has the highest propensity to sue of any time period here. It

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1 gets the most weight in establishing this trend because it's
2 the highest point. Well, it gets the same weight literally,
3 but it is the highest amount.

4 This is only based on a partial year data, so he's kind
5 of annualized it. Said I've got filings for the first few
6 months of 2010. I'll say so I've got five months. Then I'll
7 take essentially twelve-fifths of that and say that's the
8 number of claims I would get.

9 There's a high degree of uncertainty in that number and I
10 think that's not the best way to do that. Just leave it at
11 that.

12 Q. Now, slide 16 summarizes your response to his -- to his
13 response to your rebuttal. Have you covered these points
14 already?

15 A. I think I have. I think it's -- just in the end I would
16 say that it's not that I'm advocating use of any of these
17 trends. I'm thinking that -- I'm saying what you really need
18 to have is an underlying model which explains the
19 inter-temporal dynamics and not just simply take the numerical
20 trend and extrapolate it forward on the basis of the fact that
21 the estimate without it is, quote, implausibly low.

22 Q. What impact, quantitative impact did the spurious trend
23 have on Dr. Peterson's forecast?

24 A. Well, essentially just raised it \$130 million, net
25 present value.

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1 Q. Okay. The next error you point out is correcting data
2 processing errors.

3 A. Correct.

4 Q. Would you explain what that refers to.

5 A. Well, these are mostly what Dr. Gallardo-Garcia was
6 talking about in his description which is by not properly
7 accounting for the information in the data, you're going to
8 over estimate first the number of pending claims. Over
9 estimate as a result of it the settlement rate because, in
10 fact, many of the claims that you find out the information on
11 are in fact dismissed mesothelioma claims that should be
12 treated that way within the data. Otherwise, you're not going
13 to treat the data as -- properly with regard to the settlement
14 rates. It affected the average settlement amount.

15 And in particular, the issue came up here about the fact
16 where the three verdicts should be placed and how -- the
17 impact of those. And Dr. Gallardo-Garcia was tested on that
18 by Mr. Swett.

19 I think a simple example illustrates the fundamental
20 point that he was trying to make on that. Consider a
21 situation which is not uncommon in the situation that Garlock
22 faced when it had a large verdict where the plaintiff and the
23 plaintiff's law firm that is basically negotiating with
24 Garlock expects to get higher settlements, having once
25 demonstrated that they can bring a case against Garlock and

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1 establish the credibility of taking cases to trial if Garlock
2 does not pay them more. This was something that occurred in
3 the first half of the decade of the 2000s a number of times to
4 Garlock.

5 They did not believe that the plaintiffs could actually
6 prove the case against them. They resisted. The plaintiff
7 said, well, we can. The plaintiff's law firm said we can.
8 And they -- Garlock -- they needed to establish for Garlock's
9 purposes if they wanted to get higher that they had a credible
10 threat of taking cases to trial.

11 So suppose -- it's a simple numerical example. Suppose
12 that you have a case here that went to trial and Garlock lost
13 and as a result of it paid a million dollars. It had a
14 million dollar verdict that it's going to have to pay at some
15 point.

16 And suppose as a result of that, prior to that time
17 period it had been settling cases with the law firm for
18 \$10,000 each. But now, subsequent to that time, it negotiates
19 a settlement agreement where it's going to pay them \$50,000
20 each.

21 And so suppose they get ten of those cases each year in
22 the subsequent year. As a result of the verdict, and probably
23 in many cases as a result of negotiating subsequent to the
24 verdict, the payment of that, they also negotiate a settlement
25 amount for the future cases of that law firm. So they agree

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1 to \$50,000 a case and that's going to be the amount that
2 they're going to pay going forward.

3 If you're trying to do a forecast from this point going
4 forward of those cases from that law firm, you should be using
5 \$50,000 because as we move forward in time, as a new case
6 comes up, that's the amount that we're going to pay on it, not
7 \$10,000.

8 If you do the analysis the way that Mr. Swett suggested
9 you do, that Dr. Peterson and Dr. Rabinovitz did, and if that
10 payment, that million dollars was paid in the period two years
11 later, say, or a year later after the negotiations, so it's in
12 the calibration period.

13 So if you have, just for the numerical example, ten cases
14 at \$50,000 each for those five years, and we're going to stop
15 and do the calibration at that point, you would have,
16 essentially, you know, ten cases at \$50,000 each and get
17 \$500,000 per year. You'd get \$250,000 (sic) for the 5 years
18 across the 10 -- the 25 cases that you get.

19 You put a million dollars into that average. Now you're
20 going to get 26 cases. And instead of having \$5 million --
21 five times -- two and a half million dollars, you're going to
22 have three and a half million dollars. And now you're going
23 to divide it by 25 and you're going to wind up with a number
24 here that's more like \$70,000 a case.

25 Well, the new cases that come up, as they really come up

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1 in the underlying process, really only cost \$50,000 per case
2 but the numerical average that they will have calculated is 20
3 to 30 to 40 percent too high because they've thrown the
4 verdict payment amount into the calculation after the impact
5 on the settlement amount has already happened.

6 So it double counts the impact of the verdict. And
7 verdicts are special in that way in that the role that they
8 played was establishing the value, the credibility of that law
9 firm of being able to take a case to trial. So even if it's
10 cases that they wouldn't have any liability, they've
11 established the credibility that they're willing to take a
12 case to trial and then Garlock has to pay more to settle those
13 cases, at least to avoid the trial costs if nothing else.

14 Q. Okay. Turning to slide 19, can you describe the impact
15 that placing the verdicts in the wrong year has on an
16 estimate.

17 A. Well, this chart shows you an amount that is the average
18 resolution amount. This chart comes out of Exhibit, I think
19 it's 22 in my rebuttal report. The size and the heights of
20 the bars in dark blue are -- the amount you get is an average
21 resolution rate including settled claims and the zeros.

22 The light blue bars on top -- unfortunately on the screen
23 here they don't show up. Things that are light tend not to
24 show on this screen very well. But they show where the
25 verdicts are and how much they would have added to those

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1 values.

2 So it shows you essentially what the average resolution
3 amounts are for the years. Here's where the verdicts took
4 place are in this year, this year, this year, and this year.
5 And this is where we had the higher settlement values in this
6 time period here. Thus that process that I was just
7 describing.

8 If I take the amount that are in those light blue bars
9 and put them into these years, in particular, if I put them
10 into this year and this year, even though these are somewhat
11 down for a number of reasons, perhaps the increased number of
12 dismissed claims, but also perhaps the impact of trusts
13 finally has an effect. In any case, those values would be
14 much higher.

15 And as a result of having done that, Dr. Peterson and
16 Dr. Rabinovitz calculate resolution averages which are about
17 where the dotted red line and the solid red line are there
18 which would be unrepresentatively high relative to what's
19 taking place in the settlement subsequent to when those
20 verdicts took place.

21 Q. Okay. Changing subjects, Dr. Bates. We heard a little
22 bit of testimony from Dr. Gallardo-Garcia about the errors and
23 the suggestion by Dr. Peterson that when you correct errors in
24 a database, it distorts the database because those errors are
25 offsetting other errors. And he talked about the transition

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1 matrix. Can you please respond to that issue.

2 A. Yes. This is an issue that Dr. Peterson and I have
3 discussed back and forth over a number of times in terms of
4 the way you should properly do this. Obviously, real data is
5 better than essentially imputing what the disease would be if
6 you could possibly know it.

7 But he discusses what I think is theoretically a
8 reasonable procedure to use. We have several issues, however,
9 that we have to take with that procedure.

10 One of them is, first, the time period in which he used
11 to start his transition matrix is the number -- the size of
12 the percentages that he gets when he does that computation of
13 that transmission -- that transition matrix is very much
14 impacted by the fact that he's starting the data with a
15 database in 2005 going into subsequent periods.

16 I think that if you actually went back and saw --
17 remember the chart that Dr. Swett put up there when he was
18 talking with Dr. Garcia about the number of cases in 2005 that
19 were old dismissed cases that were in that year.

20 That's the result of the fact of in 2004, late 2004 when
21 I was retained by EnPro to do the work with Garlock in the
22 first place, one of the first things I did in my initial
23 examination of the database was ask them about their record
24 keeping capabilities -- their record keeping practices. And I
25 insisted that they do an effort to go back and clean up their

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1 database and establish and put into their records and find
2 from their local counsel records of dismissed mesothelioma
3 claims, dismissed all claims because their practice was
4 generally to not really follow up on that because once the
5 claim was dismissed, they didn't have to worry about it. They
6 didn't want to spend any money on it, and it just didn't get
7 changed in the database.

8 So for my purposes and for purposes of being able to work
9 with the data, I asked them to make an effort to clean up that
10 record. So that's what that was a result of 2005.

11 What we saw in the chart that we did here is apparently
12 they let that practice lapse a little bit through part of the
13 2000s and then reinitiated that effort at some point in the
14 2009 period.

15 So that's one issue which is by starting off in the
16 period from 2005, they're using a database which had a number
17 of old claims in it which were not recorded with active
18 disease but were updated as dismissed mesothelioma claims.

19 And by the way, when most of these claims do transition,
20 they transition at a time period where the claim is resolved
21 in some way. And by and large, the vast majority of these are
22 transitioned to dismissed claims, not to well paid claims.

23 The second thing about it is even if we take
24 Dr. Peterson's transition amounts, which these are the
25 percentages that he used for the disease categories of amounts

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1 of claims within each disease category that would transition
2 to mesothelioma, he's applied these numbers in some way to all
3 of the old unknown claims in the database which the vast
4 majority of which -- I mean, almost all will never be
5 transitioned. They certainly are not mesothelioma claims.
6 They've been the result of two exhaustive searches to bring
7 all the mesothelioma claims out. That's why we have the spike
8 in 2005; we have the spike in 2009.

9 Second of all, if we look at then the claims that have
10 been filed since 2005, we really only have 1334 claims with
11 unknown disease. This is after the time period when large
12 numbers of unknown claims, which were by and large mostly --
13 the vast majority of which were non-malignant claims of some
14 sort.

15 So even if you apply these transition percentages, which
16 are most certainly too high, relative because of the reason I
17 first said, to these amounts which are the diseases that we've
18 got since this time period, 2006, the most you can get is 85
19 of them, not 850. And I have no idea how we can get 850 out
20 of this small number of relative claims without the
21 mesotheliomas coming forth.

22 The last point here is that within the PIQ process
23 itself, plaintiff lawyers have come forward with approximately
24 58 -- I think it's 58 claims that were listed in these
25 categories and said they are mesotheliomas. So I believe in

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1 applying these procedures the plaintiff lawyers themselves
2 have already brought forward 70 percent of what would be those
3 85 claims. So this can't be a material issue in any way.

4 Q. So what impact would correcting data processing errors
5 have?

6 A. Well, the data processing errors, as we discussed before,
7 was approximately an \$80 million issue, even more so for
8 Dr. Peterson.

9 Q. Okay. The next error you have listed is account for
10 jurisdiction of claims. Would you please describe that error.

11 A. Sure. This is a variant of something that we had talked
12 about earlier about, you know, if you had a group of claims
13 which you thought were relatively higher value, and then other
14 claims, it's appropriate to treat them as two distinct pools
15 and have them separately valued and they'll have a distinct
16 average. The average between them when you blend them should
17 be the overall average.

18 And if you have a group of claims which is from where you
19 took the sample and got your average, computed your average
20 settlement value, if it's -- if the distribution of claims
21 within that pool is the same as the distribution of claims
22 across those value -- those jurisdictions in the claims which
23 you're trying to estimate, then you can use the overall
24 average reliably.

25 On the other hand, in this particular case, that's not

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1 what you have. In particular, we know that the claims in
2 California and New York -- this is just an example because
3 there are a couple of other states that we could have included
4 in this too, but to make the fundamental point here, which is
5 two states, which are California and New York, which have a
6 settlement resolution average that includes the zeros of
7 almost \$70,000, as compared with the overall average is
8 somewhere around 38, \$39,000, is distinct from all the others
9 which have an average about just under \$30,000.

10 In fact, there's a couple of other states I could have
11 put in there, Pennsylvania and Virginia, would have made that
12 average higher and the other states even lower, but I think
13 this strongly made the point.

14 And so these two jurisdictions have distinctly different
15 settlement averages.

16 If we look at the next slide on this.

17 Q. Twenty-three?

18 A. Slide 23. These blue bars and the yellow bars tell you
19 the percentage of claims both -- the blue bars are the
20 percentage claims that -- on the resolved claims where we
21 calculate the average. That is, the settlement average we
22 took is made up of nearly 23 percent of cases, 22 percent of
23 cases from California and New York, and 80 -- 78 percent from
24 other states. Whereas, the pending claims are only
25 represented by about 15 percent of claims coming from New York

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1 and California, whereas 85 percent.

2 So if we apply the average that we would get by taking
3 these two pieces together and applying it to the pending stock
4 here, we're going to be applying more -- a weighted average of
5 higher values to the overall claims than is warranted given
6 the distribution of the claims.

7 Q. Now, did you hear Dr. Peterson's response to this
8 criticism?

9 A. Yes. He said we needed to do a breakdown by more states,
10 which I was rather pleased to hear that we should do more
11 segmentation rather than less because over the years that's
12 been one of my primary criticisms of his which is that he's
13 not done a sufficient segmentation.

14 So I was a little bit interested to find based on the
15 analysis that I did that he came up with a settlement average
16 when he did it by all of the states individually, they got him
17 a higher settlement average given the predominant role that
18 California and New York played in that. Well, the difference
19 was that he left out the zeros.

20 If you actually do it by state as he suggested, but not
21 only account for the payment -- the settlement average but the
22 payment rate as well, which is what you get when you do the
23 average resolution value, of course, it turns out, of course,
24 it went in the same direction that I said. That the weighted
25 average of the resolved claims is \$36,000, but for the cases

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1 that were in the pending pool that we're going to apply, if
2 you took the same averages by state and apply this to, you
3 would have gotten a number less than \$35,000.

4 This isn't the proper way -- fully proper way to value
5 these claims, but it does show you that the distribution, the
6 jurisdictional mix issue does matter and it essentially goes
7 in the direction that I indicated by the analysis that I
8 expected.

9 Q. So next you have two errors grouped together here. Would
10 you describe those for the court.

11 A. These have to do with timing of the claims. They're
12 related to each other. Essentially, these two categories --
13 this is where I said the other things that didn't take account
14 of just the jurisdiction.

15 But the claims in the pending pool are made up of claims
16 of different vintages, and claims that are of different
17 vintages get paid different amounts. As Dr. Gallardo-Garcia
18 mentioned in response to one of Mr. Swett's questions, it's
19 well established and patterned in this data that many of the
20 claims, particularly the higher value claims get paid up front
21 within a year or two after they are filed with the company,
22 and that claims that tend to lag in getting settled over a
23 period of time drop in value.

24 This is going to matter because the way Dr. Peterson and
25 Dr. Rabinovitz treat the claims is they take all -- in their

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1 extrapolation model, they take all the pending claims and, for
2 Dr. Rabinovitz, treats them as if they were resolved all at
3 once in 2010. And Dr. Peterson treats them as if they were
4 all resolved in 2011.

5 So the entire stock of pending claims out there, 3900
6 about, more than two years to literally three years worth of
7 mesothelioma claims are all paid in just one or two years,
8 which is much more rapidly than they would have been paid in
9 the tort system had these progressed in the normal progression
10 of events. This significantly front loads the forecast.

11 It also means that when they -- where they place claims,
12 by doing this simple procedure of where they place the claims,
13 it has the net effect of front loading the forecast in a
14 number of different ways. You wind up by putting them in the
15 wrong years. You apply the wrong inflation. And then you
16 apply the wrong discount rate to them both.

17 There's a second issue which is, just to go back one
18 here, that comes out of the way and it's -- Mr. Radecki does
19 his discount rate calculation. And I know Your Honor is going
20 to get the reports on the discount rates from the experts at
21 another time. But this particular issue here is one that is
22 not a factor of what should the discount rate be but, rather,
23 an artifice of the calculation.

24 If you recall, Mr. Radecki calculated discount rate by
25 taking a weighted average depending on what the distribution

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1 of claims were that Dr. Rabinovitz gave him. So she gave him
2 a huge spike of claims in 2010 and then a small number in
3 2011, '12, and '13. He used a term structure of interest
4 rates that basically says as claims get farther in time, that
5 interest rate gets higher.

6 But he first calculates a weighted average of the
7 duration of time to say what should be the interest rate that
8 I should use. Well, included in that calculation was all the
9 pending claims which aren't going to get discounted.

10 So the artifact of this is the more claims you put into
11 pending claims pool and the higher and the sooner you have
12 them paid, the lower is your discount rate and hence the
13 higher is your future claims estimate. That is, the more
14 pending claims you have and the sooner they're paid, the
15 higher is your future claims estimate just through the
16 discount rate you choose.

17 That's a nonsense calculation. Why in the heck should
18 your number of pending claims affect the discount rate about
19 your future claims? That's what his calculation did.

20 Q. So what does slide 27 show?

21 A. Well, it shows -- this shows you the lag -- the measure
22 on the bottom is the length of time in years from diagnosis to
23 settlement. And the vertical, it shows you the percentage of
24 claims.

25 So within the first year after the diagnosis, claims are

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1 both filed and settled about 15 percent of the time. And this
2 is diagnosis, not filing here. So this is -- and so we have
3 here, again, within one year you've now got an additional 33
4 claims -- percentage claims are both diagnosed and settled.

5 And then as you can see, there are claims that get
6 settled and these are settled claims that get paid extending
7 way out in time, but the percentage of them is very, very low.

8 Q. And slide 28.

9 A. This actually shows you the way in which the values,
10 settlement values themselves are affected by the timing. So
11 whereas, the overall settlement average is, you calculated, we
12 saw, was somewhere in the range of \$60,000. We know that from
13 this graph -- and this is a fairly -- a fairly strong result
14 correlation wise. That if you look at claims that are paid
15 within the first year since diagnosis, they get on an average
16 about \$90,000 in recent years, the same period as the
17 resolution period. And that drops about 16 percent a year in
18 a very steady pattern going out through time.

19 So taking account of the fact, as we do on the next
20 slide, that the distribution through time of when claims are
21 settled as we first showed you, the blue bars. The red bars
22 show you the age at the time of the -- at the time of the
23 petition date. What was the age of the pending claims? That
24 is, what's the amount of time they've had from diagnosis date
25 to petition date?

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1 You can see that there's a -- these claims are on average
2 much older. In fact, they're about two and a half years older
3 on average than the claims that are -- that were settled in
4 calculating the settlement average. That means we're using --
5 because of the prior graph, we're using the wrong settlement
6 amounts in valuing the claims. They're actually lower value
7 claims because they're older and hence with two years, two and
8 a half years, they're going to be about 30 percent less,
9 40 percent less in value than they would have been otherwise.

10 That reduces the estimates, again, about \$80 million.

11 Q. And then you have on your list of errors apply consistent
12 inflation and risk free discount rates. Would you explain
13 what that means.

14 A. Right. That is the issue, then, of what is the inflation
15 rate you should apply to the -- and what is the discount rate
16 you should do in calculating the value of the estimate in
17 total. There are reports on this coming from the financial
18 experts. Historically, if we -- slide through to the next
19 slide. Dr. Snow will provide his report on that.

20 Historically, based on my understanding of the economics
21 and the finance, which is not deep which is why I have the
22 finance experts. They've always advised me to use for a
23 long-term forecast approximately a 3 percent real -- long-term
24 real discount rate when you're talking about such a long-term
25 forecast. It's what the CBO uses in its analysis. That is

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1 the difference between the inflation rate which is forecast by
2 the CBO to be about 2-1/2 percent, and then with a 3 percent
3 premium on that compounding to, that calculates out to a 5.575
4 discount rate. And that is, contrary to what Dr. Peterson
5 said, that is a risk free rate from the Congressional Budget
6 Office long-term forecast.

7 Q. Are you familiar with the practices of Drs. Rabinovitz
8 and Peterson themselves in prior cases with regard to the
9 discount rates they use?

10 A. Yeah. For the most part, most of the time period over
11 the last decade that we've been doing these analysis, they've
12 used discount and inflation rates that are very similar to
13 what I've used here.

14 Q. And that's addressed at length in Dr. --

15 A. Dr. Snow's report.

16 Q. -- Snow's report?

17 A. Yes.

18 Q. So you've corrected a number of errors there. Can you
19 explain where that brings us.

20 A. Well, that brings us down to a point which is essentially
21 about at the upper end as we had in the chart that I had for
22 the other -- the last time we were here. We've added two
23 other lines on this which I mentioned before. But where we
24 had in our direct report the amount of the liabilities down
25 below, as I explained to Your Honor before in several of the

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1 estimates.

2 The estimates that I got from taking the financial
3 reporting model that we did at the end of the period of 2009,
4 the last financial forecast we did, if I limited that to be
5 mesothelioma claims, extended it out for 50 years, and then
6 used the present value number instead of the nominal face
7 value of the claims, I got numbers that were right in the
8 range of just over 600 million.

9 For Dr. Peterson and Dr. Rabinovitz, when I do these
10 kinds of adjustments to correct their, what I believe are
11 methodological errors in what they do, I get numbers which I
12 would find is not materially different from them within the
13 range of the uncertainties of these forecasts. And that's
14 where the little green bar is up in the range there that's
15 just a little bit above 600 and below 700 million.

16 So that's -- what I've labeled that was payment
17 extrapolation with trust disclosures as the mid-2000s. That's
18 essentially the experience that Garlock was facing at that
19 time with the -- with whatever information was being revealed
20 about the exposures by the individuals and given the different
21 law firm practices and their practices as we've heard a lot
22 about in here.

23 Many of the law firms filed the trust claims and
24 disclosed their trust claims, but there's others who don't and
25 that had a lot to do with our thinking in terms of when we

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1 were doing the financial reporting forecast. We had several
2 of them, but that was the upper end of the forecast which we
3 made.

4 Q. And you testified earlier in the case about the work you
5 were doing when you were doing the financial reporting
6 forecasts, and you said when you were doing that work, you
7 were estimating expenditures.

8 A. Correct.

9 Q. Okay.

10 A. That's this part over here.

11 Q. Okay. Now, you focused on the upper end of what you
12 called the range. Your financial reporting forecast actually
13 predicted or estimated a range of outcomes?

14 A. It did. We did that -- a wide range of forecasts based
15 on scenarios in which we tried to evaluate what the impact of
16 the trust disclosures would be when they finally came on line.

17 At the beginning of the time period when we were doing
18 that work, it was just at the time period where Garlock was
19 first struggling with the transition from the period of the
20 1990s where the information on the exposures of the insulation
21 products was being willingly allowed by the plaintiffs to a
22 period where they were not finding that in their testimony
23 anymore. And they were having to figure out strategies and
24 tactics for dealing with and obtaining this information.

25 I mean, we've heard a lot about it in the courtroom over

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1 the last several weeks and we talked about this, about how
2 it's shifted the burden of finding what the true exposures
3 were had shifted. Mr. Swett was talking about what Garlock
4 could do to get those.

5 Well, every one of those things they talk about shifted
6 the burden, shifted the cost of doing that from the plaintiff
7 who willingly espoused it where it was not an expensive thing
8 to do to Garlock which was a very expensive thing to do.
9 Hiring experts and doing investigations, doing a lot of work.
10 And that greatly exceeded its costs.

11 So within the time -- the way we were thinking about this
12 in terms of the 2000s while we were doing the financial
13 forecasts was that at some point in the future when the trust
14 came on line, that information would begin to come back into
15 the settlement process and into the tort system and it would
16 have its impact on lowering the amounts that Garlock would
17 have to pay because its expenditures would be lower, its risk
18 at trial would be lower.

19 And through this proceeding, we've been able to develop
20 the more coherent sophisticated model with the information to
21 be able to estimate those impacts more fully. That's
22 described in the range that we have there.

23 Q. Okay. So let's turn to the last error on your -- in your
24 rebuttal report and that has to do with accounting for trust
25 money.

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1 A. Right. So essentially, the simplified model that
2 Dr. Peterson and Dr. Rabinovitz used to extrapolate just
3 simply does not have the structure necessary to account for
4 the changes in the historical litigation environment. There's
5 no basis to study it. There's no basis to quantify it. They
6 simply look at the time period and say here's a quantification
7 and the only dynamic element to their model is what is given
8 to them by the incidence curve that was calculated either by
9 Dr. Nicholson in the case of Dr. Peterson or by the work that
10 we did at KPMG in the case of Dr. Rabinovitz.

11 Certainly there is nothing that can account for the
12 dynamics of current litigation environment. There is
13 certainly not the impact of the costs and the difference in
14 the costs or the changes in the risk that they face and how
15 that would have affected settlement.

16 So it's just a numerical extrapolation which, if you were
17 coming from a fairly stable environment that didn't change
18 over time, can give you through that process, as long as
19 nothing else changes, a numerical answer that can be reliable
20 in that context.

21 But if you have any expected changes that occur or if
22 you're trying to account for changes that occurred in the
23 past, it has no ability, it's completely vague about that
24 because the model simply doesn't have that capability. It
25 requires a dynamic model with more elements associated with

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1 it.

2 In particular, in their forecast that they've done, the
3 extrapolation from this period that we've seen where the
4 resolution period -- resolution amounts are the highest,
5 Dr. Peterson certainly can't account for in their model any of
6 the past distortions that we saw here through the suppression
7 of evidence kinds of things that we saw that take place. In
8 particular, the strategies that were developed in the early
9 parts of the 2000s, the decade which persisted throughout the
10 2000s, essentially withholding evidence regarding the
11 exposures to the trusts that became a common practice of some
12 law firms as we saw discussed here.

13 And they certainly can't account for the future changes
14 as there are -- both, there are certainly -- partly as a
15 result of the practices that we've seen take place and the
16 recognition that those practices are not fair and not
17 appropriate for the tort system. There are -- there are
18 reform efforts going on at both the state and federal level
19 with regard to gaining some fairness in that process.

20 More importantly as well, under the plan of
21 reorganization, certainly plaintiffs can be required to
22 provide all that exposure information similar to what they do
23 currently now in trusts where they file claims, where they
24 have to give their work history and tell the basis of why
25 they're exposed to this product. In some of the trusts they

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1 require more demographic information, plan of reorganization.
2 But we hope that they'll appear and rely more on what's done
3 in the Western McArthur trust where it accounts for age and
4 accounts for dependents and accounts for life status of, you
5 know, living spouse and so on.

6 So you can through a plan of reorganization, you know,
7 essentially have the plaintiffs provide that information
8 instead of having the defendant have to basically extract that
9 information through costly discovery process. And that
10 affects, as we've seen here, that affects the -- what the
11 settlements should be -- will be.

12 Q. Have you analyzed the financial impact of -- on Garlock
13 of different law firm strategies in terms of providing trust
14 claim exposures and not providing exposures?

15 A. Yes, I've done it in two different ways here. We did
16 this recently based on what we saw unfold here in the court
17 system. So this is not in our -- not in our rebuttal report
18 or not in our affirmative report because we just watched this
19 unfold as we were here.

20 But we took the -- all the law firms that were on the RFA
21 list, there's about 25 of them, and we calculated their
22 settlement average in the period of 2006 through the petition
23 date.

24 For those law firms we got, when you can account for all
25 of them, their settlement -- their settlement average here is

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1 about just over \$80,000. It's about \$85,000.

2 If we limit our attention to the seven or so law firms
3 for which they took actually the discovery on, those law
4 firms, for the claims that we saw, those claims were --
5 themselves were very high. But those law firms, if we look at
6 the settlement average for those law firms is almost \$160,000,
7 over \$150,000 on those law firms.

8 In contrast, with all of the other law firms, for all of
9 the other firms, the settlement average is right around just
10 under \$50,000. Somewhere in the neighborhood of \$46,000.

11 So that the difference in the practice of where these
12 were the firms that were essentially identified as being ones
13 that potentially withheld trust information and through the
14 discovery here on these, on 15 out of 15 cases we saw that
15 there were very significant withholding of -- suppression of
16 exposure evidence. Those are the RFA-1A law firms, is the
17 title underneath there.

18 We saw that that has a very significant impact on the
19 settlement average here because these are the cases -- these
20 are the firms which basically through these practices both
21 increase the cost to Garlock in trying to obtain the
22 discovery, increase the credibility of a threat of taking a
23 case to trial, and increase the trial risk itself in the face
24 of not having sufficient evidence, not having all the evidence
25 that should otherwise be there.

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1 Q. Yes. And just to be clear here, when you're calculating
2 average settlement values for each of these firms, for the
3 RFA-1A law firms, for example, you're including more than just
4 the claims for which Garlock obtained discovery.

5 A. Oh, yes. Those claims would be a lot higher actually
6 averages. These are all of the claims for those law firms
7 from 2006 to the present time.

8 Q. And do you recall -- let's see where I am here.

9 A. The next slide, this is the second way we talked about.

10 Q. Yes.

11 A. This is the thing that was addressed somewhat in his
12 rebuttal to me by Dr. Peterson, so we'll talk about this a
13 little bit.

14 This was -- this is the result of the data that we got --
15 the analysis we did using the data that we got from the DCPF
16 trust. Those were ten trusts from one trust facility who we
17 provided, Garlock provided -- that Bates White would help
18 produce the list that Garlock submitted to the trust to the
19 names of all the settled mesothelioma claims.

20 So we got back a record from them about whether or not
21 they had filed a claim with those trusts with the date at
22 which it was filed and whether or not they had been paid.

23 And an interesting observation occurred where if we look
24 at the time period subsequent to when the trust started paying
25 claims, at about the time period where there was a significant

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1 increase in the amount of funds available to pay claims in
2 late 2007 and into 2008, then we find that there's a
3 distinctly different settlement average between the claims
4 that had settled their claim after they had done the trust
5 filing versus settling the claim before they had done the
6 trust filing. Probably stating that actually backwards.

7 It's really, in fact, that, you know, what happened here
8 is we had claims that are filed with trusts and they
9 subsequently settled with Garlock because they had a tendency
10 in terms of the practice of the law firms that do these kinds
11 of things -- and as we now know a little bit more, it's really
12 a law firm practice issue. Many of them file their trust
13 claims before and then they go ahead and pursue their tort
14 claim.

15 Whereas these, the practices we saw described here, they
16 either routinely withhold the trust forms or it's held by a
17 separate law firm which governs when the trust funds are paid
18 as we saw in some of that description.

19 So in this, this shows a distinctly different average
20 that you would get based on the simple observed difference
21 between the -- whether you would file the trust filing -- at
22 least one trust filing or not.

23 Q. We're turning now to slide 39.

24 A. Yes. This is in response to what Dr. Peterson said, and
25 spent some more time thinking about it because I think the

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1 chart that he put on the screen is very informative for what's
2 going on. I mean, he shows data -- he provided it to
3 basically show that I was mixing claims that really came from
4 two different law firms together in different proportions and
5 hence I was getting a difference in that settlement average
6 because you were mixing law firms that had -- they -- even
7 though before -- whether they had before or after settled
8 their -- filed their trust claims, they had settlement
9 averages that were very similar between those two. The
10 different mix between them gave the appearance as if there was
11 a big difference in the average and it really wasn't. It was
12 just a mix issue.

13 It's deeper than that. The practice of whether or not
14 they settled the -- filed their trust claims before and when
15 they filed them vis-a-vis when they settled the trust claim is
16 a matter of a business practice for the firm. The practice
17 has developed where some law firms strategically withhold as
18 their practice, as was stated here, filing the trust claim
19 until after they resolve their tort claims.

20 All right. If we go to the next slide to show this.
21 This is Dr. Peterson's slide. This is what he put on the
22 screen. Blow this up.

23 The numbers on these slides really help. So he had two
24 law firms. And what he said was here you have firm one and
25 firm two. And in this case this firm had an average of about

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1 \$30,000. And here's another firm and it had an average that
2 was somewhere in the neighborhood of \$220,000. And it made no
3 difference whether they had filed their claim before or after
4 on an individual basis.

5 But the fact of the matter is because there were a lot of
6 these -- this is 101 of these and only 24 of these. That is,
7 for the most part, you know, they only settled about
8 20 percent of theirs. 80 percent of their claims get filed
9 early. Whereas, in this case you only have 4 here and 12
10 here. 80 percent over here gets filed after instead of
11 before.

12 Since you blend these averages together, you get a lower
13 number here than you would have gotten when you were putting
14 two of them together.

15 It's not the fact on whether or not these individuals
16 within these firms filed their cases before or after. It's
17 the business practice of the law firm that matters. The
18 reason both of these claims get about the same is that this
19 practice of this law firm is to essentially file its claims on
20 a contemporaneous basis. It doesn't withhold the trust
21 claims. It files them. It provides the information about
22 them.

23 And there's a lot of the law firms in the data that do
24 that and their settlement averages are all similar to what
25 they were. They're somewhat higher than they were in the

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1 1990s. But not nearly to the extent they are with these law
2 firms which systematically withhold them. As a result of
3 that, they basically are the firms that basically can
4 establish credible risk of going to trial against Garlock.
5 They basically develop a pattern of settlement with Garlock.
6 And the fact that they have a few cases for which they've
7 actually filed the settlements or not is immaterial because
8 these are essentially trial avoidance costs for many of these
9 cases and they're essentially getting the benefit of the group
10 kind of deal that this law firm has done.

11 So it's the law firm practice. This slide is very
12 telling.

13 This slide shows you that this is what is -- that there
14 is an increasing practice amongst the plaintiffs and an
15 increasing practice amongst the law firms to file claims
16 essentially with the trust before Garlock settlement. Now,
17 this is only with the DCPF trust.

18 This basically means that as the trusts have come on
19 line -- and remember, the trusts have really only started
20 coming on line here in a big way here and really paying claims
21 out and most of them pending claims in this frame and really
22 starting to pay claims on a contemporaneous basis over here
23 from the payment graph that we have which is in the rebuttal
24 report.

25 You can see that the percentage of individuals who have

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1 filed their claims with one of the DCPF trusts, and that's
2 only ten of the total number of trusts that are out there, has
3 grown dramatically over the recent years.

4 There's a lot of economic incentive to try and get your
5 claim in with these trusts sooner. We've heard the
6 description about how the plaintiffs, when they come to the
7 plaintiff law firms, how they're in need of money. They have
8 expenses. They -- and so getting the money from these trusts,
9 which can be a sizable amount of money, is something that they
10 really don't want to delay if they don't have to.

11 So the economic incentive to do that is strong and it's
12 getting even stronger as more trusts -- there's another
13 \$10 billion that is going to go into these trusts over the
14 next few years as WR Grace and Pittsburgh-Corning and so on
15 get up and running.

16 Next slide.

17 Q. Yeah, slide 42 talks about trust claims among the PIQ
18 claimants.

19 A. Right. So within the PIQ we've seen that essentially
20 95 percent of the claimants with pending claims who responded
21 to PIQ had already filed a significant number of claims with
22 the trust. Remember the other graph was just for the settled
23 data with the DCPF trust. This is from the PIQ data. This is
24 from the pending claims.

25 And in total what we see was the median number of trusts

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1 that was filed was -- so far is 18. And so far they have
2 already received payments from eight of them. The average
3 receipts at this point is somewhere between 250 and \$300,000
4 at this point already for pending claims from the trust.

5 Q. And that was as of the date of the PIQ responses?

6 A. Correct.

7 Q. So what is the -- your -- how have you quantified the
8 impact of --

9 A. So what I did was two things on this. I first used the
10 DCPF trust data, and this is what I reported in my rebuttal
11 report.

12 In terms of using what Peterson and Dr. Rabinovitz did
13 with their forecasts is I added what the impact would be if
14 you assumed that the -- all of the claimants actually filed
15 their claims with the trust on a contemporaneous basis with
16 their tort claims. So I removed the practice of withholding.

17 So I treated all the claimants as if they were the
18 claimant -- the same as the law firms which filed their claims
19 and their trust and tort claims on a contemporaneous basis.

20 And I -- in addition to that, I adjusted down the trial
21 risk values to take account of the fact that when you
22 basically file your trust claims, it lowers the trial risk and
23 lowers the discovery costs on the higher value claims as well.

24 The impact of that is to give you a number that is in the
25 range, then, of around 300, 320 million dollars which is at

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1 the low end of the financial reporting range. Which again, as
2 I described before, if I take -- which was what I was doing
3 with financial reporting and trying to take account of what
4 the trust would be, my last forecast is in the neighborhood of
5 the bottom end of that range as well.

6 The additional thing that I did was simply take -- and
7 that's a more complicated calculation which involved both
8 accounting for the change in the costs as well as the change
9 in the trial risk.

10 In addition, what I did was I took the raw -- the RFA
11 list settlement average and simply assumed that the average of
12 the RFA-1 claims were simply the same as the RFA group more
13 generally and did an analysis of what that settlement average
14 would be for the overall. And then also assumed what would
15 happen if all of the RFA firms simply had the same practice
16 and got the same amount as all of the firms that were not on
17 the RFA list.

18 And the calculations there, depending on which one of
19 those I did, give you a range that ranged essentially between
20 500 -- 400 and 500 million dollars, just below the middle of
21 where the financial reporting range.

22 So essentially, if you remove the impact of the practices
23 that we saw here of withholding of the evidence in a way that
24 was described by the RF -- the RFA firms, that's the kind of
25 number you would get as a financial forecast and extrapolation

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1 of the settlements.

2 Again, these are all expenditure estimates using what you
3 get on the right-hand side of the model over there which is
4 with the settlements, with the impact of the defense costs and
5 the costs.

6 Q. Okay. We have about 45 minutes left.

7 A. Okay.

8 Q. We're going to shift subjects here. I want you to
9 address the criticisms that you heard from Drs. Rabinovitz and
10 Peterson to your case in chief estimate.

11 A. All right. So again, this is just -- we -- I think we've
12 got that up on the screen up there. This is just a repeat
13 showing the basic model again. There's no changes. So we can
14 just go forward here.

15 What I've gone through here is I've just listed a number
16 of the criticisms they made at various times and what my
17 response is. There's a lot of words on the screen because we
18 may not get to some of these and I wanted to leave you behind
19 with something to understand my responses to them.

20 On her last slide, Dr. Rabinovitz basically described the
21 methodology as unaccepted and untested. Basic point here is
22 methodologically this is using well tested, accepted
23 scientific estimation methods that have been developed over
24 decades and decades.

25 It applies the standard law and economics model relating

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1 legal liability to settlement. Well studied for a decade.
2 Professor Heckman talked about it.

3 Uses the long-established statistical econometric
4 methods.

5 And in particular, to estimate the model's parameters, we
6 quantified the parameter variation as described by Professor
7 Heckman. I'm going to show you some of that.

8 So we've basically applied the scientific method
9 throughout to do this.

10 This model represents a very significant improvement over
11 prior empirical evaluation models. It's made possible through
12 the enhanced data available through the discovery in this
13 case. And importantly, it allows the quantification of the
14 actual relationships between asbestos liability to settlements
15 and the parties' cost of litigation.

16 Many of the criticisms that have been described in terms
17 of what we do and the challenges we did, this kind of a model
18 is the kind of model that you use. It's standard in
19 econometric analysis. It's standard in social science
20 analysis of using a model to essentially test the results of a
21 hypotheses, test the result of a question about how
22 something -- one thing relates to another. And that's what
23 we've done.

24 Q. Now, the next criticism, I believe you've already
25 addressed this by referring to the model, and that is that you

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1 have reconciled Garlock's actual liabilities.

2 A. Right. Essentially, what I've described here is a
3 reconciliation between the liability estimates and the
4 settlement, and they reconcile, I think, very well given the
5 costs and our understanding of the costs of the parties.

6 There's been several questions raised about that here so
7 I wanted to do some testing of that.

8 Q. So let's go directly to the components of your estimation
9 approach.

10 A. All right. So essentially, what we have essentially over
11 on the far left-hand side over here, as you recall, the way we
12 estimated the model, we estimated the various components of
13 the model starting with the compensatory award. Figuring out
14 how many shares there would be for that as a typical claimant.
15 Estimating what we believed the likelihood of success would
16 be. Accounting for the defendants's costs. Accounting for
17 the plaintiff's costs on these as well. Getting our estimate
18 over here of what the liability was. And then using Garlock's
19 settlements and our understanding of the costs and the
20 plaintiff's costs to test whether or not that made any sense
21 and whether this was a coherent model.

22 And so we went back and forth between those but focusing
23 on the liability estimation. That's -- and using the data as
24 a test.

25 So the first set of criticisms they leveled at us is that

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1 we didn't do the compensatory damage estimation properly.
2 Challenges have been that there's not enough data to do this.
3 In particular, it's been claimed that we -- there were only 24
4 Garlock verdicts which added unreliability and uncertainty to
5 the model.

6 There are data, public available data on 367 verdicts out
7 there. They are not representative as we've talked about.
8 The ways in which they're -- go back for just -- go -- they're
9 not representative.

10 So we took account of that in what we did. We used --
11 had a model built of the economic damages from Dr. Brown and
12 we estimated what the noneconomic damages are.

13 The critiques were that there was not enough data. And
14 in particular, it didn't capture -- from Dr. Peterson, that it
15 didn't capture important trends; in particular, an increasing
16 trend in the verdict amounts.

17 Q. And Dr. Rabinovitz found significant that there were only
18 24 verdicts.

19 A. She did.

20 All right. So --

21 Q. Slide 50.

22 A. The regression we used and the reason why we had to use a
23 regression is because we have several different -- we can just
24 get at settlement an average of the verdicts, but that average
25 is not an appropriate average because, again, the

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1 representative group of claimants that we have, for plaintiffs
2 for which we have -- for which we have verdicts doesn't match
3 the pool of plaintiffs we have. They tend to be younger.
4 They tend to be from higher value jurisdictions. They're more
5 likely to be alive. All things which affect the verdict
6 values typically within the data. So regression method is a
7 way of actually controlling for that bias that gets created.

8 As far as it goes, regression uses well -- sound
9 established econometric procedures. There are standard
10 model -- standard output from the model provide the
11 statistical variation measures of uncertainty that judge the
12 formulation. The kinds of things like competence intervals
13 that Dr. Heckman -- Professor Heckman talked about.

14 The criticism that regression only is 24 Garlock verdicts
15 is just specious. The potential compensatory damages are
16 determined by the plaintiff characteristics, not by the
17 identity of the defendant. So it's the claimant's
18 characteristics that determine the characters. So they don't
19 have to be Garlock verdicts because there's nothing special
20 about damages against Garlock relative. It's the plaintiff
21 who -- damages. So the additional pool of verdicts matters
22 there.

23 I don't think there's any other data that helps.

24 And I'm going to show you that Dr. Peterson's verdict
25 trend is just, again, another spurious trend.

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1 Dr. Rabinovitz's criticism that the use of the verdicts
2 adds unreliability and uncertainty. I don't think that's
3 right at all.

4 The model -- the output from the regression provides us
5 the measure of the uncertainty and leads me to conclude that
6 it is a reliable regression analysis to use.

7 And in particular, we've also gone and tested it against
8 1200 other wrongful death cases that come from WestLaw that
9 are non-mesothelioma cases, basically to be able to extend the
10 analysis to other states. And the wrongful death verdicts
11 that we get are, for the most part, very similar to what you
12 get for wrongful death cases and personal injury cases from
13 mesothelioma cases.

14 Q. What does slide 52 show?

15 A. This is just a picture of the output that came from a
16 regression run that we did. It's actually a combination of
17 two of the ones that would be in our background material, but
18 it's essentially -- it shows you essentially what comes out of
19 the measure.

20 And on this chart in particular, I just want to point out
21 to you, here's the confidence interval. They give you the
22 range of uncertainty. We get the variable names that we use.
23 We get the slopes. And just to focus on one of them, here's
24 the age parameter coefficient we get from it. Up there it
25 says minus 4.3. Minus 4.3 per year. By the significance test

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1 we get here, it's highly significant. It's confidence
2 interval is very tight. It's a very good estimate of that
3 parameter.

4 Some of the other parameters that we get, they have
5 different degrees of level of reliability and significance to
6 them. The analysis is all there of them. But it's really
7 important that the age one is so well estimated. And whether
8 it was my regression that I did or whether it was
9 Dr. Peterson's reestimation of it, that parameter comes out in
10 that range as reliably estimated.

11 Q. Do you recall this slide from Dr. Peterson's
12 presentation?

13 A. Yeah. This is the way he pictured the trend, his trend
14 analysis. And he shows you -- essentially, what he's done is
15 he's taken all the three hundred and some verdicts and
16 essentially taken the average in each year and created this
17 wire plot. So a point like this would be what he estimated as
18 being the average in that year. The point there would be the
19 average of the fifth year and so on.

20 The way I look at it is the following. These are the
21 actual verdict amounts. And so what he's done is you can see
22 now each of the individual data points. And again, the scale
23 over here is done by logarithm because it makes the analysis
24 easy and it's standard in these cases.

25 But what he has done is he has taken the scatter plot and

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1 estimated this blue dotted line as a trend which he says
2 increases in nominal dollar terms of 7 percent a year.

3 Well, the question is is there really a trend in this
4 data by the verdicts? In fact, an alternative hypothesis
5 which basically goes with the fact that there were significant
6 changes that went on in this time period in the history of the
7 asbestos litigation and as reported in -- outside the
8 literature, that's about the time when the *Daubert* revolution
9 was essentially sweeping across the country in courts and they
10 were basically imposing higher standards.

11 So an alternative hypothesis is that not only -- not that
12 there's a trend, but, rather, that there is just simply a step
13 up in verdict amounts from this period to this period.

14 So how do you test against those alternative hypothesis?
15 Well, one way to do that is simply to break the period up into
16 several periods. Here we have the period where we have the
17 data here from '97 to 2000. Another period 2001 to 2005,
18 2007. Each of these periods has significant amounts of data
19 in them and they allow us to get an average within each one of
20 them. And now let's just do a simple test of whether or not
21 the average from one is different from the average in the
22 other in each of these periods. If it's a trend, you would
23 expect to see just a step up of the averages and you should be
24 able to test that.

25 This is the result of the statistical test of that. And

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1 what it says is on the top one is that if I test at the 2005,
2 if this was in 2010, it says that the average between those
3 two time periods is virtually identical. It's one of the
4 strongest statistical tests I've ever seen the result of
5 across these tests. It's got a T test that says that these
6 results are -- the difference between them is none at all.
7 Whereas, there is a very striking difference between the
8 period from the 1990s to the period of 2010. And the impact
9 is measured through -- the statistical measures is quite
10 strong.

11 So the statistics reject there being any kind of temporal
12 trend. It's a single, one time shift. And of course, if you
13 try and fit a straight line to a one-time shift, it will
14 create an upward slope. That's what happened. That's what
15 Dr. Peterson did.

16 Q. Now, you had also estimated or opined in your initial
17 report that there would be 36 liability shares in a Garlock
18 case. That Garlock would share liability with 35 other
19 defendants. And this part of your report also drew fire from
20 Dr. Peterson and Dr. Rabinovitz.

21 A. Yes. In particular, their critique here was that if you
22 looked at the Garlock's verdict history, it should be -- you
23 know, Garlock could be one of two shares. Well, that's --
24 that's a remarkable statement in light of Garlock's position
25 within the litigation environment; that we should take all of

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1 the claims that are filed against Garlock and in estimating
2 its liability come to conclude that Garlock should be half of
3 the liability associated with those claims, on claims for
4 which -- even for just a limited number of claims for which it
5 would win.

6 This is a quantification. It's done in such a way that I
7 believe that it is, in fact, lower than the actual number of
8 shares that would be if we basically could somehow know what
9 exposures, in fact, were.

10 I think that it is -- we used -- because of the
11 significant issues we have in collecting the data on shares,
12 it has potential for nonreporting bias and other kinds of
13 reporting bias. So a median statistic is what I used as
14 opposed to a mean because the median is less sensitive to
15 extremes on the outside that can be the subject of the kind of
16 nonreporting bias which in my investigation is prevalent here
17 in the sample.

18 By that I mean, is if you look at some of the claim files
19 where we only get one or two claims of exposure in them and
20 then you actually look at the claims files themselves, they
21 name 50, 60 parties. They've collected from multiples of
22 these parties. But the deposition and records and
23 interrogatory records which was the discipline that we imposed
24 to collect this data doesn't have the names of any of those.
25 And it is extremely unlikely in light of that history that

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1 they don't actually have more exposures on it given there
2 is -- given their industries and occupations and their
3 discovery of their work histories.

4 We didn't go to the next step of trying to fill those
5 things in from what they said. That would have been far too
6 much work. But it is as a matter of the sample that we have,
7 it is very likely that the low -- extreme low numbers here
8 have a lot of nonreporting blanks associated with them. For
9 that reason it's not really appropriate to use the mean
10 statistic because -- as I'll describe in a moment so we used
11 the median.

12 But it is based on review of hundreds of deposition
13 interrogatories and PIQs. It is the result of a significant
14 amount of work. I believe it gives us a reasonable
15 quantification, albeit somewhat conservative and counter to
16 interest.

17 Particularly, we also assume that all the shares we would
18 get would be equal. Given the science that we've seen
19 presented here and the relative comparisons between the
20 exposures of Garlock's products versus other products, that's
21 a very conservative assumption, vis-a-vis Garlock to assume
22 that its share would be the same as others. There's no -- it
23 would be hard to come up with a basis of coming up with shares
24 in an alternative way that's a disciplined way, so we adopted
25 that assumption for this purpose.

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1 Q. Okay. And I believe you already tested the fact that
2 Dr. Rabinovitz said the correct share should be 2.78 percent
3 and Dr. Peterson --

4 A. No, she said it should not be.

5 Q. Oh, it should be higher. Yeah, it should be 41 percent.

6 A. 2.78 is 1/36.

7 Q. And Dr. Peterson one half.

8 And I believe you've already -- you've already talked
9 about this.

10 A. We'll talk about this very quickly. I think the first
11 thing to say is that Garlock's true liability here is most
12 assuredly lower than 1/36 if you consider the product use, how
13 it's used, where it's used, and the other products in the
14 presence of it.

15 You consider the epidemiology of the product. That is,
16 we've done some calculations here as a result of listening to
17 science here and if we adopt the plaintiff's science case,
18 but -- and take the exposures of Garlock gaskets all the way
19 up to 2000, we only get 75 additional cases of mesothelioma
20 for all time out of -- less than .2 percent of the
21 contribution.

22 So if you try to think about it, epidemiological share,
23 gaskets and Garlock is only one of many, it's much too high.

24 And historical lawsuits. Garlock has been sued with a
25 lot of other ones.

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1 So I think what Dr. Peterson and what Dr. Rabinovitz did
2 was take the 20 adverse verdicts that Garlock received, and
3 where it was the subject of strategic targeting by the
4 plaintiffs to focus its case on Garlock, the kind of thing we
5 saw going on here from a science case to the exclusion of
6 everyone else. And that is an important component to how
7 plaintiffs will run their case. But they don't do that
8 against every defendant at the same time. They have to do it
9 one at a time, but they can't do it for Garlock against
10 everyone.

11 So you either have to consider Garlock being put on an
12 equal stead with all of the potential plaintiffs -- defendants
13 who could be targeted on each case or you have to consider the
14 fact that only a very small number of the cases will Garlock
15 be targeted in. But either way, you would come to the same
16 conclusion about what the relative liability is. But we've
17 seen the description here of how that strategic marketing
18 works.

19 It's an effective practice. If you -- the plaintiffs, I
20 understand, give seminars on how to essentially maximize the
21 likelihood of success against a particular defendant.
22 Websites by -- articles by particular law firms for their
23 marketing purposes talk about how you can use -- focusing your
24 case on an individual plaintiff to get around, say, California
25 Proposition 51 which has to do with the sharing of economic --

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1 the fact that they have offsets that they did when they went
2 for economic damages, so how you should just go after
3 noneconomic damages.

4 So it allows you to basically target your case; and for
5 the plaintiff's side, minimize their costs and increase their
6 cost of win without violating their ethical duties of not
7 getting the maximum value for their case.

8 Q. How many other defendants who we've heard the committee
9 and the futures rep call viable defendants, how many other
10 viable defendants are there?

11 A. Well, this is from a plaintiff's --

12 MR. SWETT: Objection. This is not in any report.
13 This is utterly new.

14 MR. CASSADA: This is off of a website. It's a
15 site --

16 THE COURT: Overruled. Go ahead.

17 A. This is just downloaded from a website of a plaintiff's
18 law firm that recruits for mesothelioma claims. They assert
19 that there are 600 viable defendants. Our own database shows
20 thousands of names. Many of those are duplicates because of
21 their related corporate entities. But there's -- from the
22 standpoint of litigation, there's -- there must be many, many
23 co-defendants.

24 Q. Referring to slide 59, does it seem plausible that
25 Dr. Peterson could really believe that Garlock has 50 percent

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1 of the liability --

2 MR. SWETT: Objection.

3 Q. -- in cases against it?

4 THE COURT: Overruled.

5 A. Dr. Peterson has estimated that dozens of companies had
6 liability from the same group of claims over and over and over
7 again, as has Dr. Peterson.

8 Q. And with respect to Dr. Rabinovitz, she's done the same
9 thing?

10 A. I find it lacks credibility to say that Garlock would be
11 one of two shares in a liability calculation given all of the
12 estimation and given the commonality between the claimants.

13 Q. And we're referring now to slide 60.

14 MR. GUY: Your Honor, I would just object that
15 Dr. Rabinovitz's CV talked about the work that she's done and
16 didn't talk specifically about gasket claims.

17 THE COURT: Overruled.

18 MR. GUY: Except as to Garlock.

19 THE COURT: Overrule the objection. Go ahead.

20 Q. Now, Dr. Peterson also had some specific criticism during
21 his testimony about your calculation of the 1/36 share.

22 A. Yeah. I mean, this is -- I don't know this is worth
23 spending a lot of time on by any means. But he had a slide
24 where he essentially said that if you're even going to do the
25 calculation I did, you shouldn't do 1/36. The number should

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1 be 1/23. And he said -- and he showed a calculation that he
2 did.

3 First of all, the only reason he does get the calculation
4 that he does is because he uses a mean when I actually used a
5 median.

6 He said one of the statistics I calculated for the trust,
7 he had the trust and the tort backward, I used the median but
8 for the other one I used the mean. In fact, as is very clear
9 from my description of it in my report as well as my backup
10 material, I used the median for the reason that I described
11 earlier.

12 This -- he asserts that this property described is both
13 the property of both the mean and the median. It's not. It's
14 the property only of the mean. The median does not have that
15 property. You can use -- let's just use his particular --
16 let's go to the next slide for a second. I'll just use his
17 example that he had on the screen.

18 What he said was, look, if you had three different cases
19 where they had one, two and three defendants on each one, each
20 one had a hundred dollar share. You'd have \$100 for defendant
21 here, \$50 for Garlock here, 33 here. That the average would
22 have given you something that was essentially 60 something
23 dollars a share instead of 50. And he said, well, that shows
24 you that, you know, where the bias is.

25 Well, if you used the median in both cases, right, the

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1 median number of shares is two. The median share is 50. So
2 it does not have that bias associated with it. That's one
3 thing here, that I didn't use that statistic with that
4 property.

5 The second thing about it is if we go back to the slide,
6 back to the slide, is that as I described, it's a median
7 statistic. But more importantly, within the range in which
8 the shares matter, right, whether you use 30, 36, 42, if you
9 use the mean or a median in that case, the average -- the
10 difference between it is only 2 percent. Not this.

11 Now, what's the result of that? Well, I don't have the
12 easel here to show you, but if I'm just going to draw a
13 picture in the area for you here. On the vertical axis I'm
14 going to have percent share that he's had there. And on the
15 bottom here we're going to have number of defendants. If this
16 is one party's share, then the top point up here is a hundred
17 percent. If it's two, it's 50 percent. If it's three, it's a
18 third. If it's four, it's a quarter. If it's five, it's
19 20 percent. If it's six, and so on.

20 And what you can see is this is coming down steep, but
21 then it's getting very flat. And as I get out here beyond six
22 and seven, this curve which came down here becomes very, very
23 flat.

24 Well, the difference why you get between the mean and the
25 mean is this property of, if you were going to take an average

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1 of two values here, right, the average is given by -- on the
2 middle of it in a straight line here, it would be above the
3 curve. As you get out here, the average is virtually the
4 same. The line is almost straight as you get down here.

5 So it's very important for his analysis and the impact of
6 his analysis that it take place -- that we're only talking
7 about one, two, and three. I can have these numbers separated
8 by a lot more, but they're out here on the part where the
9 difference between the mean and the mean -- the mean and the
10 median is very little.

11 So it's not the statistic I used. It's not used on
12 purpose because of the issues of the bias. But even if it
13 was, the difference within the range that is, if any relevance
14 at all, makes almost no difference at all. So it's not a
15 criticism that I think makes any difference.

16 Q. Okay. Let's move to slide 63 talking about another
17 variable within your model and that's liability likelihood.

18 A. Right. This was the criticism that we took the time
19 period. And this was the thing that we had -- so we've now
20 covered the compensatory award part over there plus the share
21 amount. So now we're on to the part about the liability
22 likelihood.

23 And as you recall, we had a series of 83 verdicts here.
24 We said no, it's a selected group. So the question is --

25 THE COURT: Before we get into this, why don't we

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1 take a break until 4:15.

2 THE WITNESS: Okay.

3 (Brief recess at 4:05 p.m.)

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5 DIRECT EXAMINATION (Cont'd.)

6 BY MR. CASSADA:

7 Q. Okay. Dr. Bates, we were talking about liability
8 likelihood, and you were addressing criticisms from
9 Drs. Peterson and Rabbitovitz with respect to your liability
10 likelihood.

11 A. Correct. So as Your Honor recalls is we looked at
12 Garlock's trial record, over 83 mesothelioma trials. A number
13 of them being in the 1990s. Many of them being in the 1990s,
14 and then in the 2000s as well. And we saw a distinctly
15 different -- different success ratio. Even though it's only
16 83 trials we had a -- that Garlock had a very high success
17 rate in the 1990s when plaintiffs were willingly espousing the
18 exposures to the amphibole insulation products.

19 Through the bankruptcy wave and through the early part of
20 the 2000s, Garlock was confronted with and took some fairly
21 large adverse verdicts during that time period. And in
22 response to that, did several different things.

23 It developed -- it learned how to -- it learned that it
24 needed to basically work on developing the exposure evidence.
25 It developed experts who could help it with that. It wound up

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1 spending lots more money on the cases in defending the cases.

2 And consequently, in the second half of the 2000s, its
3 verdict rate on the cases that the plaintiffs decided to take
4 to trial went back down. It also paid for a few more cases at
5 a higher rate than it had in the past as I described in my
6 original report.

7 On the basis of that experience, looking at the
8 commonality between the 1990s and the period post-2005, I
9 concluded that the period of time for calculating Garlock's
10 liability, which would basically not be -- not allow for
11 the -- account for the suppression of evidence that took place
12 particularly in the early parts of the 2000s and so on, that
13 the period in the 1990s would be more representative of an
14 appropriate trial share amount.

15 Dr. Peterson and Dr. Rabinovitz both argued that if I was
16 going to do that calculation, I needed to use the entire
17 verdict history of about 24 which came out to be about 24.1 or
18 40 -- 20 over 83 percent as being the right amount or
19 potentially just using the full period of the 2000s only,
20 which is 36. something or other.

21 Dr. Peterson also asserted that the period of -- that the
22 claims -- all claims -- you know, most claims represent a
23 probability of an adverse verdict for Garlock is greater than
24 0.

25 So first of all, the criticism was that the liability

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1 likelihood should be 2.1 to 2.4 -- 24.1. 8.3 is the rate that
2 was there.

3 More importantly, I've done the tests both to show that
4 it is quite -- statistically a quite different period,
5 significantly different in the first five years of the 2000s
6 than either the period before or the period after. And that
7 if you test the difference between those two periods, they,
8 from a statistical sense, show no apparent difference.

9 More importantly, I think, is the test that I did with
10 the settlement data where I used the whole liability model,
11 the law on economics model with the costs that Garlock showed
12 and the tests that we talked about in some detail on my direct
13 which basically indicated here that we actually had, in fact,
14 an average liability likelihood rate that was less than
15 1 percent. And it would be constructive for that, a
16 confidence interval about that which would basically say that
17 it ran from about .3 percent to 1 percent. So using this type
18 of statistical procedures that Dr. Heckman talked about, we
19 used that.

20 This is a description of the tests that we ran to test
21 whether or not the period from the period of 2001 to 2005 were
22 the same or different from the periods from the 1990s to the
23 2000s or past 2006. And it says it distinctly is. So we'll
24 just slip on past this for a moment.

25 I think the criticism that Dr. Peterson leveled here was

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1 that the \$200,000 liability threshold is arbitrary and said
2 it's not supported by the data. And then he stated that the
3 \$10,000 is equally plausible.

4 Well, this is a pretty specious analysis. If you got an
5 amount that's above 200,000, it's certainly above 10,000. So
6 when you do the test for 10,000, all the amounts above 200,000
7 are there. So all you've really demonstrated by doing that is
8 that showing how good the test is at detecting the presence of
9 cases which have liability likelihood in them. In fact, his
10 demonstration of this shows this, as we'll show in the graphs.
11 In fact, let's just get to the graph in the next one.

12 This is the graph that he showed where he had basically
13 fit the age effect as he analyzed it in logarithms for the
14 amounts over 200,000. And then he did it again for the age
15 effect for the over \$100,000. And then he shifted the curve
16 so that they lined up so that you could see --

17 THE COURT: Over a hundred or over ten?

18 THE WITNESS: Ten, excuse me. \$10,000.

19 Well, as you can see that the one over \$10,000 is
20 flatter than the one over \$200,000.

21 Well, if you take a bunch of things where you have
22 an effect and you mix it in with a bunch of things where you
23 don't, where you have a slope with a bunch of things that have
24 zeros, then the line that you get is going to get flatter.
25 That doesn't mean that that's the right threshold. It just

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1 means that you've mitigated, attenuated the situation some.

2 So going back to the last slide for a second.

3 Q. We're back to slide 66.

4 A. Back to slide 66.

5 Essentially, the analysis that I described in my rebuttal
6 report showed how sensitive the age settlement test was at
7 detecting liability. In fact, I put in where I tested, adding
8 essentially a liability likelihood to all the settlements
9 below a certain level to see how sensitive the statistics were
10 at finding it. And if I put as little as .035 percent of
11 liability likelihood in there, I could detect it.

12 So if you recall when I had my chart where I showed what
13 the change was and I had the groups of claims and I had one
14 that had 17 percent and the other one said nil, the nil is
15 basically -- this is the quantification of nil. It is below
16 0.035 percent on this.

17 The relevant test is not whether or not the amount less
18 than -- the relevant test is not whether amounts above \$10,000
19 can you find the effect. The relevant test is whether or not
20 there's a threshold below which you cannot find the test --
21 find the amount. And that is a very strong result as
22 Dr. Peterson had shown on my results on the screen where you
23 got the coefficient below there of .00033 per year which is,
24 again, an extremely strong result of saying there is
25 statistically no difference from zero in the estimates.

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1 Just so we don't get it confused that it's the low dollar
2 amount that matters, when you apply this test to the 1990s,
3 you find that the threshold was at \$11,000 not at \$200,000.
4 Back in the period where they had, you know, many more cases,
5 the small number of cases that they were paying settlements on
6 for which there was a liability risk associated with them, the
7 amounts they were paying were much less because the other
8 co-defendants were in the courtroom, or at least their
9 exposure evidence was in the courtroom and they were paying a
10 much lower share and their costs of doing that were much lower
11 and they -- their liability type settlements were at much
12 lower values. So it's not a factor of that.

13 (Counsel and the witness conferred.)

14 THE WITNESS: To make sure that you do -- the
15 threshold was -- I had several slides here that talk about the
16 threshold is not -- of 200,000 is not arbitrary. It was based
17 on an economic analysis of the costs to Garlock. The slides I
18 was going to show is statistical tests which also showed that,
19 but in the -- given the time that we have, I'm going to slip
20 over that and go to an overall test of their criticisms.

21 If we go to a prior slide for just one moment.

22 What I'm going to do to test the opinions -- the
23 rebuttal opinions regarding the law and economics model is I'm
24 essentially going to use the opinions that they described in
25 their rebuttal reports, Dr. Peterson and Dr. Rabinovitz, about

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1 what the amounts should be and run it through the model for an
2 example case to show you just how -- how off it is.

3 And so I'm going to -- the opinions to be tested are
4 from the rebuttal reports on here. I've shown you the page in
5 the rebuttal reports where they express those opinions about
6 what those numbers should be if I was going to do them. And
7 essentially, they attach to each one of the boxes here.

8 Ideally, I would have taken you through this slide
9 by slide but --

10 MR. SWETT: Objection, Your Honor. None of this is
11 in any report. It's not going to be possible to extemporize a
12 response to this on cross examination. It should be excluded
13 as beyond the scope of the opinions previously expressed.

14 MR. CASSADA: This responds specifically to
15 testimony that --

16 MR. SWETT: That's what rebuttal reports are for.

17 MR. CASSADA: It responds to testimony we heard for
18 the first time.

19 MR. GUY: It responds to the rebuttal reports.

20 THE COURT: Well, let's eliminate this. I don't
21 think this is necessary, counsel.

22 THE WITNESS: Okay.

23 (Counsel and the witness conferred.)

24 MR. CASSADA: Thank you, Your Honor. We have no
25 further questions.

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1 THE COURT: All right. We'll go -- are you going to
2 go first, Mr. Guy?

3 MR. GUY: Yes, sir.

4 Your Honor, as Dr. Rabinovitz is not here because
5 she had a medical issue she had to deal with, so I'll try and
6 do my best in her stead.

7 (Witness resumed the witness stand.)

8 CROSS EXAMINATION

9 BY MR. GUY:

10 Q. Dr. Bates, my name is Jonathan Guy. I represent the FCR.

11 Now, you criticized Dr. Rabinovitz for including defense
12 costs in her estimate, correct?

13 A. For her estimates of the amounts of money that should be
14 paid to the asbestos plaintiffs, yes.

15 Q. And you know that she derived those defense costs from
16 the monies that the debtors spend defending cases in the tort
17 system.

18 A. That's my understanding.

19 Q. Have you read the debtors' proposed trust?

20 A. Yes.

21 Q. Do you understand that the debtors plan in part on being
22 able to litigate cases to the extent plaintiffs want to take
23 their claims to the tort system?

24 A. That's my understanding.

25 Q. And the amount that the debtors are proposing to fund the

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1 trust with is \$270 million, correct?

2 A. Correct.

3 Q. And if plaintiffs decide that they would rather have
4 their claims litigated in the tort system, then the debtors
5 would have to defend those claims, correct?

6 A. If that were to happen, but I don't believe it will.

7 Q. Let's say it did. Would Dr. Rabinovitz's estimate of
8 defense costs be out of whack?

9 A. Yes.

10 Q. Even if you litigated all the claims?

11 A. They weren't going to litigate all the claims.

12 Q. Well, they never litigated all the claims before, did
13 they?

14 A. That's -- and they wouldn't in the trust as proposed.

15 Q. Do you have any reason to believe other than rank
16 speculation, sir, that to the extent the debtors were to
17 litigate claims in the future, it would litigate claims in the
18 same percentage that it did before?

19 A. Yes.

20 Q. And what --

21 A. I do have a reason to believe that. They would not.

22 Q. That's your personal opinion.

23 A. No, it's not just a personal opinion. It's a
24 professional opinion. For example, we have many, many trusts
25 which pay amounts of money that are very similar to the

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1 amounts of money that were paid here. And virtually no
2 claims, given the rules of those trusts, are litigated against
3 those trusts.

4 I don't see any reason why given the amounts by which
5 these amounts exceed the liability that Garlock would pay and
6 given the rules of the evidence, the rules of information that
7 they would need to provide, and given the experience of the
8 other trusts who pay very similar amounts to this trust, why
9 there would be any reason to expect that there would be
10 litigation here against Garlock when there's not against all
11 those other trusts and these amounts by the principles of law
12 and economics are above the liability amounts by significant
13 amounts.

14 Q. Dr. Bates, we only have a small window as always.

15 A. Sorry, Mr. Guy, I was responding to your question.

16 Q. Those other trusts have trust distribution procedures
17 that were accepted by the plaintiffs, correct?

18 A. Not the individual plaintiffs who are filing and settling
19 those claims.

20 Q. By the class of plaintiffs they accepted those trusts,
21 didn't they?

22 A. The individual plaintiffs who were filing those claims,
23 many of them were essentially -- essentially represented by
24 future claimants, by a future claimant representative and they
25 have their own independent decisions to make about whether or

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1 not they file those claims against the trust, and very few of
2 them litigate.

3 Q. Now, you don't take issue with Dr. Rabinovitz on the
4 propensity to sue issue because she doesn't have an upward
5 sloping curve for that, correct?

6 A. Well, I think the -- the cases where we have the issue,
7 there were some minor issues there, but that's not the --
8 that's not the main issue that I would take with her, no.

9 Q. Now, on the settled but not paid dispute, that's, what, a
10 \$10 million issue, correct?

11 A. Yes.

12 Q. Now, turning to the issue --

13 A. The settled but not paid? I don't think that's a dispute
14 at all. That's just a question of whether or not it's an
15 amount --

16 Q. Whether the plaintiff settled or not.

17 A. Oh, the contested claim issue?

18 Q. Yes.

19 A. That's a different issue. There was a group of claims
20 that are settled but not paid that are not in dispute. Those
21 are just simply going to be paid, the amounts that were agreed
22 upon, presumably, under whatever the bankruptcy does.

23 And then there's the contested settlements --

24 Q. Dr. Bates --

25 A. -- and the issue there --

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1 Q. Dr. Bates, the issue of Dr. Rabinovitz not knowing for
2 sure which claims are settled because the debtor said they
3 settled some and the plaintiffs said, no, we didn't, that
4 issue is a \$10 million issue in your chart, isn't it?

5 A. That in combination with the double counting, yes.

6 Q. Right. Now, you said, well, all these claims aren't
7 going to get paid in the first year because the debtors'
8 historical experience was it would take longer for claims to
9 be paid, right?

10 A. Claims historically have been paid, distributed over a
11 number of years after filing.

12 Q. Now, that's in the tort system, right?

13 A. That's what Dr. Peterson -- Dr. Rabinovitz was
14 estimating.

15 Q. Okay. But you're saying that we should use the trust
16 system for the purposes of defense costs, right?

17 A. No, I'm saying that the defense costs are not
18 appropriately estimated in this context.

19 Q. For the purposes of a trust.

20 A. If you want to estimate the amount of a trust, you should
21 not be using defense costs associated with tort discovery.
22 Those are two different systems.

23 Q. But for the purpose of determining when claims are going
24 to be paid, you're jumping back into the tort system.

25 A. No. Dr. Rabinovitz was the one who said that those

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1 amounts should be a proxy for the payment in a trust and
2 that's why she estimated them.

3 Q. Now, you said that it may take a little bit longer. It
4 may take a year, may take two years, right?

5 A. For what?

6 Q. For those claims to be processed.

7 A. I showed a -- in what? In the tort system we're talking
8 now?

9 Q. You said -- I believe you said on direct examination
10 that, well, it might take a couple of years longer. It's not
11 all going to happen overnight.

12 A. Sorry, your pronouns are confusing me in light of this
13 discussion. Are you talking about how the claims would
14 normally be -- would have been settled had there been --

15 Q. Correct.

16 A. -- they remained in the tort system?

17 Q. Correct.

18 A. That would occur according to a lag of distribution
19 that --

20 Q. Couple of years.

21 A. -- can be estimated.

22 No, it's not that simple. It's distribution. Certain
23 percentage of them, different years, based on their vintage.
24 And it's a more complicated calculation.

25 Q. And Dr. Bates, you said, well, that was a problem because

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1 Mr. Radecki assumed a discount rate that was for an eight-year
2 window, right?

3 A. That's a different problem.

4 Q. Okay. Now, if he had used a ten-year window, do you have
5 any idea how different the discount rate would have been given
6 what we know about discount rates?

7 A. I don't think that's the same point.

8 Q. Do you know?

9 A. Do I know? No, sitting here I don't carry around a yield
10 chart and the expected yields on ten-year bonds for the next
11 three or four years.

12 Q. Mr. Radecki does that.

13 Now, Dr. Bates --

14 A. Apparently not well.

15 Q. Really? Well, let's look into that. Your colleague
16 Dr. Snow, who is not here, suggests that the court should use
17 the weighted average cost of capital, right?

18 A. If that --

19 Q. Correct?

20 A. That's Dr. Snow's opinion, yes.

21 Q. That's his --

22 A. Should -- I don't -- in this context I'll let him -- I
23 think you'll have to ask him that question.

24 Q. Well, I'm asking you because he's not here and you just
25 referred to his opinion. He used the weighted average cost of

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1 capital, right, to discount?

2 A. I think that's one of the things that he calculated.

3 Q. Okay. Now, that's a risk rate, right? It's not a risk
4 free rate.

5 A. That would be my understanding.

6 Q. Now, he's your colleague, right?

7 A. Yes.

8 Q. You used the risk free rate, didn't you?

9 A. Yes, I did.

10 Q. Is there anything Bates White wouldn't do to push that
11 number down?

12 MR. CASSADA: I'm going to object because I think
13 Mr. Guy is misrepresenting the report in the context of
14 Mr. Snow's opinion. He offered alternatives and he provided a
15 context for those alternatives.

16 THE COURT: Sustained. Go on and ask him some
17 questions.

18 THE WITNESS: Is that a question?

19 THE COURT: No, that was an argument.

20 THE WITNESS: Thank you.

21 BY MR. GUY:

22 Q. Now, Dr. Bates, you rely upon the Congressional Budget
23 Office, right, to determine what the discount rate should be?

24 A. I have used the discount rate as published by the
25 Congressional Budget Office in accordance with their long-term

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1 inflation estimate, yes.

2 Q. Now, you're an economist, right?

3 A. By training.

4 Q. You understand what U.S. Treasury yields are, right?

5 A. Generally.

6 Q. And you understand that they're actually driven by the
7 market, right?

8 A. Generally.

9 Q. As an economist would you think the market view of
10 discount rates -- of interest rates is actually a more
11 reliable indicator than a forecast?

12 A. Not for a long-term forecast necessarily. Depends on
13 what interest rates you're talking about and under what
14 circumstance.

15 Q. Let's just say eight years.

16 A. As I said, depends on what interest rate and what
17 circumstance.

18 Q. Now, Professor Heckman testified, correct?

19 A. I heard his testimony, yes.

20 Q. He's the witness who wasn't God.

21 Now, Professor Heckman analyzed Dr. Peterson's report,
22 correct?

23 A. That's my understanding.

24 Q. And he analyzed Dr. Rabinovitz's report.

25 A. That's my understanding.

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1 Q. And he's coming into this courtroom as an independent
2 expert to tell the court, well, this is what I would do as a
3 Nobel winning laureate if I was to do this and I don't think
4 Dr. Peterson did it right and I don't think Dr. Rabinovitz did
5 it right, correct?

6 A. That's my understanding.

7 Q. But he didn't analyze your report, did he?

8 A. Yes, he did.

9 Q. He didn't write a report on it, did he, Dr. Bates?

10 A. No. You could have asked him.

11 Q. We don't have that, do we, Dr. Bates?

12 A. You could have asked him.

13 Q. Well, the debtors could have asked him, but they didn't.

14 A. That's correct, they didn't.

15 Q. I wonder why.

16 Now, you have said, and tell me if I have this wrong, if
17 the debtors settle a case for \$200,000 or less, it's only
18 because they want to avoid defense costs in every instance.
19 Is that your opinion?

20 A. That's a mischaracterization of what I said.

21 Q. Do you believe that the debtors have trial risks when
22 they settle cases at \$200,000 or less?

23 A. Depends on the particular case. That's not what I said.
24 That's not what I described in my report. It's a
25 misrepresentation.

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1 Q. Well, I've got you here. You're captive.

2 A. All right.

3 Q. So let me ask you. In every instance where the debtors
4 settled for less than \$200,000, mesothelioma cases where there
5 was an exposure to Garlock's product, is it your position that
6 the debtors had no trial risk?

7 A. No, that's not what I said.

8 Q. Okay. Now, your model assumes a 36 share, 1/36 share,
9 correct?

10 A. That's the modeling of the share numbers, the allocation
11 of shares, yes.

12 Q. And it assumes a verdict rate from the 1990s of .0833,
13 correct? 8 percent.

14 A. Yeah, my opinion is that the appropriate rate to use is
15 less than 8 percent.

16 Q. And your model projects before you take them away
17 potentially 28,000 future claims; is that right?

18 A. I don't know what you're referring to, 28,000 claims. I
19 don't know what you're talking about.

20 Q. Well, you projected the number of future claims in your
21 report, didn't you?

22 A. No.

23 Q. You don't know the total number of future claims?

24 A. I didn't estimate a number of future claims.

25 Q. An absolute number. You didn't say that you thought

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1 there would be after reduction 16,000 claims or so?

2 A. No. I didn't estimate claims at all in my original
3 report. I estimated number of people with mesothelioma for
4 which Garlock would have a liability. Essentially what I
5 estimated was Garlock's liability using a calculation of the
6 percentage of the people with the incidence who could
7 establish contact with Garlock's product, recognizing that not
8 all of them would necessarily bring a claim against Garlock or
9 even in the tort system. So you're confusing two concepts.

10 Q. Now, do you remember Mr. Inselbuch when he was
11 questioning you about what you really did and the three-step
12 process and the two charts he put up showing the total number
13 of claims times the verdicts and then with your reduction and
14 then the division by 36 and then the multiplication by 8
15 percent. Do you remember that?

16 A. Your representation of it.

17 Q. Well, do you remember it, sir?

18 A. I remember how you represented it, but you characterized
19 it as my characterization of it which is not correct.

20 MR. GUY: Okay. Now, let's pull up one of them
21 which is the -- not that one.

22 Q. Let me put them on the screen so you can refresh your
23 recollection. You remember that, right?

24 A. I have no problem with my recollection. It was your
25 characterization.

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1 Q. Now, that number there is from your model of future
2 claims total. 28,402 future claims, do you see that?

3 A. You're missing my point. That's future incidence.

4 Q. I'm just asking you -- I'm just going to ask you a
5 hypothetical using your numbers and then you can tell me if
6 you agree or disagree. I understand --

7 MR. CASSADA: I'm going to object. Let him answer
8 the question.

9 MR. GUY: Well, if we had the amount of time that
10 the debtors have spent on their case, I would be able to do
11 that, Your Honor. But we have 45 minutes and Mr. Swett, I'm
12 sure, has questions.

13 Q. Dr. Bates, 28,402 future claims.

14 A. No --

15 Q. Do you --

16 A. -- they are not claims.

17 Q. All right. What would you like to call them?

18 A. Those are an estimate of the incidence of disease.

19 Q. All right. And you have a calculation that then reduces
20 the incidence of disease to 16,807, right?

21 A. No, that's the number of cases for which -- out of the
22 incidence of disease for which we estimate the number of
23 people would have contact with Garlock gaskets.

24 Q. Right.

25 A. Assert contact with Garlock gaskets or packing material.

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1 Q. But at least we agree that then you divide that by 36 and
2 you multiply it by .08. At least we agree on that.

3 A. Again, that's your characterization of how the
4 calculation that I described in some length -- I'm sorry, if
5 you don't want me to finish, I'll let you go ahead.

6 Q. Dr. Bates, I know your report is a lot longer. It's
7 hundreds of pages total. But in the end it gets to a number
8 close to that, doesn't it? \$97 million.

9 A. As I described, what you've got through this process for
10 this particular calculation which was the several share
11 calculation --

12 Q. Right.

13 A. -- resulted in that --

14 Q. Right. I'll pull up a chart --

15 A. I don't want to talk over you, but I wish that I could --

16 Q. -- that shows you the various parameters and then you can
17 tell me.

18 Let's pull up the one that shows the reduced number.

19 All I'm trying to do here, Dr. Bates, is to show that
20 when you change your assumptions, what impact that has.

21 So this has the number of liable parties on the top and
22 at the very top it's using your reduced claims or incidence,
23 whatever you would like to call it, 2,177, and then 16,807
24 future claims.

25 Now, when you plug that in, if you get the 8 percent

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1 number on the bottom with the 36 share, that's \$119 million.

2 That's very close to your number of 125, right?

3 A. Pretty close.

4 Q. Now, if you were to change -- just to use one example.

5 If you were to actually use a liability share of 24 percent
6 and a number of liable parties of 15, your number is going to
7 change, isn't it?

8 A. (No response.)

9 Q. If you change your assumptions, the resulting number is
10 going to change.

11 A. If you change a number, another calculation, another
12 number changes, yes.

13 Q. And you picked 36. You could have picked ten.

14 A. I didn't pick. I estimated.

15 Q. Got it. You could have estimated ten.

16 A. That would have been unlikely.

17 Q. Right. You could have estimated an actual verdict rate
18 from the history of the debtors, couldn't you?

19 A. Mr. Guy, you can just make up numbers, it's fine. But
20 that's --

21 Q. I'm not making up numbers.

22 A. This is a result of a serious study.

23 Q. I'm using your model which made up numbers.

24 A. No.

25 Q. So I'm plugging in different numbers so we see what

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1 impact that has.

2 MR. CASSADA: Judge, I would object to the question.
3 It's argumentative and --

4 THE COURT: Go ahead and ask your question.

5 Q. Dr. Bates, I have one last question for you and I need to
6 pull up your deposition from July the 1st, 2013.

7 MR. GUY: If you would go to page 350. Highlight
8 the last paragraph. So the analysis.

9 Q. Did you remember that I asked you if you could figure out
10 for us and for the court how you can distinguish between the
11 impact on claim values from the fact that defendants are
12 accessing to bankruptcy and you have fewer solvent defendants
13 in the courtroom and this issue that the debtors have, which
14 they acknowledge now is not widespread but occurs, they say,
15 with nondisclosure, if you could isolate the impact so we
16 could actually figure out what that is.

17 And do you remember you said -- you gave a very long
18 answer. "So I think that answers your question as to about
19 how much of it was attributable to an increase in the risk
20 that's associated with the other defendants not being in the
21 courtroom, though it's impossible here to really separate that
22 out from the part of it which is attributable to the fact that
23 some of the information is withheld, because it appears that
24 when the information is there and the plaintiff acknowledges
25 the information, the liability risk doesn't change that much."

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1 Do you remember that?

2 MR. CASSADA: Object to the question -- or the --
3 this question because it doesn't show him the question in the
4 actual deposition. It doesn't even show him a complete
5 answer.

6 Q. Well, do you remember Mr. Glaspy testifying earlier today
7 about the Kazan settlements, Dr. Bates?

8 A. The Kazan settlements?

9 Q. Yes, sir.

10 A. Vaguely. Go ahead.

11 Q. And do you remember --

12 A. I'm trying to figure out what you were asking here.

13 Q. Do you remember we showed the Kazan settlements and it
14 was a large number of settlements that were entered into with
15 the Kazan firm, 2005 time frame, and there were multiple
16 values for those settlements, correct?

17 A. Yes, I remember that.

18 Q. And no one is alleging the Kazan firm didn't disclose
19 trust information. And those settlement values are in the
20 hundreds of thousands of dollars, aren't they?

21 A. There are wide ranges of values there.

22 MR. GUY: I have no further questions, Your Honor.

23 THE COURT: Okay. Mr. Swett.

24 CROSS EXAMINATION

25 BY MR. SWETT:

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1 Q. Dr. Bates, good afternoon.

2 A. Good morning -- afternoon.

3 Q. I'm interested in the phrase in this chart on the right,
4 "alternative information regimes." That's a phrase that you
5 invented to describe scenarios in which different levels of
6 disclosure regarding trust claims would be prevalent in the
7 tort system?

8 A. Trust claim exposure information. It's essentially
9 shorthand for whether or not the way in which the exposure --
10 the amount and way in which the exposure information is
11 revealed.

12 Q. And what really matters is the exposure information, not
13 the claim against some trust; isn't that right?

14 A. Well, how it's -- how it's described and how it's
15 represented.

16 Q. But your notion of information regimes implies some
17 alternative to the way things are, isn't that so?

18 A. These are alternatives to -- that -- alternative ways of
19 thinking about what the information -- how the information
20 could be presented and what information was presented over
21 what -- over different time periods, yes. They're
22 alternatives.

23 Q. The term "regime" implies some kind of standard set of
24 rules or practices, doesn't it?

25 A. Well, it implies a consistent application of the set of

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1 standards with regard to how the exposure information is
2 described.

3 Q. And implicit in your notion of the idea of alternative
4 information regimes is your dissatisfaction on behalf of
5 Garlock with the way the actual existing trust system
6 allocates the benefits and burdens of information finding and
7 disclosure; isn't that true?

8 A. Nothing to do with my own personal view.

9 Q. I didn't mean your personal. Your professional.

10 A. Sorry, I thought what you asked was what I --

11 Q. You were positing alternative information regimes because
12 Garlock is dissatisfied with the way the tort system actually
13 allocated burdens and benefits with regard to information.

14 A. That's not my motive.

15 Q. Unlike Mr. Cassada, I wasn't trying to attribute motive
16 to you, but I am trying to get at the fact that your entire
17 analysis is predicated on the idea that somehow the bankruptcy
18 court by way of estimation should substitute some alternative
19 information regime for what actually obtains in the tort
20 system even though Garlock had all the tools available to any
21 litigant to enforce what it regarded as its information and
22 disclosure rights in the tort system.

23 A. Right. My point is the way which Garlock does that based
24 on what information is available will affect the costs, and
25 the costs affect the outcome. It's not an issue of me

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1 advocating any particular outcome. I'm just describing what I
2 believe as a result of my science would tell me what the
3 different levels of the estimation would be based on how the
4 information was revealed and what kind of rules prevailed in
5 that circumstance.

6 Q. And among those prevailing rules would be the burdens of
7 proof and persuasion assigned by the legal system to the given
8 party, correct?

9 A. Burden in a cost sense, I think, is an important
10 consideration.

11 Q. And in a legal sense.

12 A. Who has --

13 Q. You're purporting to estimate legal liability. Is that
14 simply an economic concept to you?

15 A. The definition that I used of Garlock's asbestos
16 liability was provided in my report.

17 Q. And it's one that assumes a different information regime
18 than actually obtains in the tort system, isn't it?

19 A. Correct.

20 Q. Okay. Now, when Manville went into bankruptcy because of
21 the forecast that it made in 1982 of billions of dollars of
22 liability looming over it in the future, it did not have the
23 benefit, did it, of an idealized legal liability, with capital
24 L, regime where some alternative information regime to that
25 actually existing in the tort system would determine how much

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1 it owed? It didn't have that benefit, did it?

2 MR. CASSADA: Your Honor, object to the question.

3 It mischaracterizes Dr. Bates' and the company's position.

4 THE COURT: We'll let him answer the question if he
5 can.

6 A. I have no idea how to answer that question.

7 Q. Well, this notion is really rather simple, isn't it? The
8 notion that Garlock has given you of what its legal liability
9 should be for purposes of this estimation is something all
10 together different from the rules and practices that would
11 determine what, in fact, it would pay on claims in the tort
12 system outside of bankruptcy.

13 MR. CASSADA: Your Honor, object again. Garlock's
14 position is a complaint about the conduct of individuals not
15 the content of --

16 MR. SWETT: I'm going to the definition of legal
17 liability that begins Dr. Bates' report.

18 THE COURT: Let's go ahead and answer the question
19 if you can.

20 A. I'm sorry, is there a question on the table?

21 Q. Yes, there is. Can you read it back.

22 (The following question was read back:)

23 "Well, this notion is really rather simple, isn't
24 it? The notion that Garlock has given you of what its legal
25 liability should be for purposes of this estimation is

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1 something all together different from the rules and practices
2 that would determine what, in fact, it would pay on claims in
3 the tort system outside of bankruptcy."

4 THE WITNESS: I think I've made that very clear.

5 Q. Okay. Now, one of the things you've told me in the past
6 when we discussed these matters in deposition is that the
7 assumption of the defined legal liability term that Garlock
8 gave you with which you begin your report assumes full
9 disclosure of the relevant facts pertaining to product
10 exposures not only from the plaintiffs but also from the
11 defendants, right?

12 A. I said -- described, basically, what would be the
13 information that would be available as what was known or
14 reasonably knowable by the parties, yes.

15 Q. But you made no quantitative -- strike that.

16 But you assumed, did you not, that Garlock historically
17 has made those full disclosures. That was your assumption,
18 was it not?

19 A. I'm not sure that -- if there was a specific assumption
20 made one way or the other. My assumption is that that
21 information is known about Garlock's products and so is
22 available.

23 Q. You don't remember telling me that, yes, you made that
24 assumption because you relied on Richard Magee's
25 representation to you to that effect, that Garlock's

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1 disclosures had been full and complete?

2 A. That's -- that's consistent with what I think, yes.

3 Q. And you made no quantitative adjustments in your forecast
4 for any alternative assumptions concerning whether or not
5 Garlock's historical disclosures had been fully complete.

6 A. I'm not aware that there should be any or what they would
7 need to be.

8 Q. Did you read the deposition of Michael Shepard in this
9 case?

10 A. Not the full deposition. I think I know to what you're
11 referring.

12 Q. Are you aware of his testimony that Garlock settled the
13 case with him at a notably high figure in the 1980s or 19 --
14 early 1990s, conditioned on his shutting down the deposition
15 at which he was about to elicit the fact that Garlock was a
16 major supplier of impregnated asbestos yarn to a competitor,
17 Chesterton, for use in Chesterton gaskets?

18 A. My understanding was that was part of standard
19 interrogatory responses. I don't think there was anything new
20 or special about that.

21 Q. Did you read that testimony?

22 A. As I said, I was aware of that, but I'm -- my
23 understanding is that -- is what I just described.

24 Q. Did you read the deposition of a former Garlock employee
25 taken in a tort suit prosecuted by what was then the Ness

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1 Motley firm, the deposition of Roy Whittaker?

2 A. No.

3 Q. So you're not aware, then, that in the late 1990s, it
4 came to the attention of Ness Motley, a leading plaintiff's
5 firm, that Garlock had given interrogatory responses over the
6 course of several years that failed to disclose that Garlock
7 had conducted or had had someone else conduct product tests of
8 its gaskets with results as to fiber emissions that were
9 unfavorable to Garlock. Are you aware of that?

10 A. I may have heard, but I don't -- as I'm sitting here, I
11 don't have a ready recollection of it.

12 Q. I don't suppose we should be going back and repricing
13 settlements from the 1990s for estimation purposes on the
14 basis of that allegation.

15 MR. CASSADA: Your Honor, object to all these
16 questions. They're making assumptions about facts that are
17 not in evidence. Nothing has been offered on this.

18 THE COURT: I'll overrule the objection. I think
19 he -- he didn't know anything about it, so that's all the
20 evidence we have.

21 MR. SWETT: Well, we're going to offer in evidence
22 the depositions of Michael Shepard and Roy Whittaker.

23 THE COURT: That's fine, but if this witness doesn't
24 know anything about it, then that's the end of the inquiry as
25 far as I'm concerned.

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1 MR. SWETT: So we move on.

2 Q. Now, you had something on the board about the RFA-1 firms
3 and their settlement values in comparison to those of other
4 firms. Do you remember that?

5 A. Yes.

6 Q. And you drew the inference that the explanation must lie
7 in what you called the business practices of these RFA-1A
8 firms with respect to disclosure of product exposures in the
9 tort system.

10 A. That was -- that was a hypothesis, yes.

11 Q. And your hypothesis is based upon the handful of cases
12 that Garlock has explored in this estimation proceeding.

13 A. And, you know, my understanding of the history, how it
14 evolved, yes.

15 Q. And you know that the law firms that show up on RFA list
16 1A have a greater propensity than most of the other firms to
17 take cases to trial, don't you?

18 A. Yes.

19 Q. And that could account, could it not, for a significant
20 difference in settlement value?

21 A. Yeah, which way the -- which way the causality go there I
22 don't think is obvious.

23 Q. Now, you recognize that in the tort system of the 2000s
24 after the widespread bankruptcies of insulation makers, gasket
25 makers became more prominent in the tort litigation, isn't

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1 that so?

2 A. Well, they became -- we saw that for Garlock they became
3 named more often. I think that's true from my experience of
4 others. They had greater costs at defending. Had -- became
5 more often targeted in the litigation than before, if that's
6 what you mean, yes.

7 Q. Do you remember the brief that you signed and submitted
8 to the California Supreme Court in the O'Neil case?

9 A. Yes.

10 Q. You made the assertion there, didn't you, that a feature
11 of the tort system in the 2000s was the greater prominence of
12 defendants like Garlock who had been in the system for a long
13 time but came more to the fore in the 2000s.

14 A. I think that's what I just said.

15 Q. And you also said that entities that had not previously
16 been sued very often, pump makers and valve makers, had also
17 become more prominent in the 2000s.

18 A. That's my understanding.

19 Q. And pumps and valves involve gaskets, right?

20 A. Among other things, yes.

21 Q. And you also said that brake manufacturers, automobile
22 makers had become more prominent in the 2000s as far as being
23 targets in the tort system, correct?

24 A. That's my understanding.

25 Q. And there are gasket cases involving automobiles, aren't

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1 there?

2 A. I'm not aware of use -- much use of asbestos gaskets in
3 automobiles, but I'll take your word for it if that's the
4 case.

5 Q. Now, let me call your attention to that step in your
6 chart depreciating the estimates of Dr. Peterson and
7 Dr. Rabinovitz based upon your various criticisms and call
8 your attention in particular to the very large adjustment that
9 you would make based upon your assumptions about, quote, trust
10 transparency.

11 A. Movement from there to there, yes, I get it. I
12 understand what you're talking about.

13 Q. So you're suggesting that the future will be different
14 than the 2000s in the degree to which the fact of trust claims
15 or of the underlying exposures involved in trust claims will
16 be more readily available to solvent defendants.

17 A. I believe that's happening as -- and has happened over
18 the last couple years, yes.

19 Q. Now, let me ask you this. Do you expect solvent
20 defendants to become open with regard to their settlement
21 information in the next phase of the tort system?

22 A. I don't believe that they'll change their practices in
23 that regard.

24 Q. You were referring to such developments hoped for by the
25 Garlocks of the world as passage of the so-called Fair Act,

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1 right?

2 A. No.

3 Q. I'm sorry, of the Fact Act. Trust transparency
4 legislation which is under consideration but not passed
5 anywhere except Ohio and Oklahoma, right?

6 A. I'm sorry, what was the question?

7 Q. The question is when you're saying to the judge that he
8 should assume that the future will be different than the 2000s
9 in some respect that you describe as trust transparency,
10 you're suggesting that such things as the Ohio statute passed
11 just this year and replicated only in one other state,
12 Oklahoma, which requires trust claims to be brought before the
13 tort suit can proceed to trial at the option of the defendant,
14 you're suggesting that somehow that will become the governing
15 alternative information regime?

16 A. No, I think there are transitions, there are reform
17 efforts along those kinds in the tort laws of the country.
18 There's also the economic benefit to the plaintiffs of being
19 able to get trust funds sooner; that basically as the trust
20 funds begin -- have begun to pay claims on a more
21 contemporaneous basis, we have a greater number, greater
22 percentage of plaintiffs of interest to get that trust claims
23 into the trust sooner.

24 Q. And that was --

25 A. So there's an economic incentive as well as basically a

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1 reform effort.

2 Q. And as far as the economic incentive is concerned, that
3 was true as soon as trusts formed in the early 2000s began to
4 pay significant dollars on claims, right?

5 A. No.

6 Q. That goes back to 2005 or 2006, doesn't it?

7 A. The real money started coming in much later, as you're
8 aware.

9 Q. The real money started to flow around 2006, didn't it?

10 A. The real trust payments really started in late 2007 and
11 into 2008. Much of that is a backlog of other -- of claimants
12 who have been waiting for payments.

13 So the issue is whether or not an individual who files a
14 trust claim can get their trust claim paid on a
15 contemporaneous basis.

16 Q. And based upon the current and anticipated level of
17 funding, you don't really expect, do you, that the level of
18 payments coming out of asbestos trusts collectively will ever
19 again approach the levels that it obtained in 2007, 2008,
20 2009?

21 A. What, you're talking about aggregated?

22 Q. Aggregate dollars out of trusts.

23 A. You're confusing two things.

24 Q. No, I'm not. I'm asking you that question.

25 A. The aggregate level of expenditures? No, you had a

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1 backlog of claimants. So you had multiple years of claimants
2 being paid off in very short periods of time, most of whom had
3 already resolved their tort claim by the time these payments
4 are being made.

5 So the aggregate number of expenditures, you'll probably
6 see those kinds of spikes when the Grace trust comes on line,
7 when the Pittsburgh-Corning trust comes on line, et cetera.
8 They will have a big backlog that will be paid out.

9 Q. There won't be as many trusts making payments in the
10 early stages of their operational life after this year than
11 there were in 2007, 2008, 2009, will there?

12 A. I'm missing the point of your question, I'm sorry. I
13 don't know what the --

14 Q. It's very simple. You would call it basic economics.
15 There was a huge amount of money coming out of trusts in 2007,
16 2008, and 2009, wasn't there?

17 A. You're confusing two things.

18 Q. No, I'm not. I'm asking you that question and you're not
19 giving me an answer. It's a simple question, yes or no.

20 THE COURT: Just answer that question.

21 A. The money that came out of the trusts in the period --
22 time period that -- the large flow of funds that came out of
23 the time period that you said were payments to tort claimants
24 from the past who have basically been waiting for those trusts
25 to come up and to begin operating.

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1 The economic incentive that I'm talking about only really
2 comes into play when a current tort claimant can basically
3 file with a trust and get paid in a reasonable period of time
4 relative to their -- to their tort claim. They can get their
5 trust claim paid off on a contemporaneous basis.

6 So the incentive that I'm talking about is not -- has
7 nothing to do with a large amount of money being paid to a
8 group of claimants who resolved their tort claims in the past,
9 but the regular flow of tort claimants who will be able to get
10 their trust claims paid on a contemporaneous basis when trusts
11 are up and operating on a basis and have worked through their
12 backlogs.

13 Q. So you've changed the question on me and answered the one
14 that you preferred to answer so I'll just move on and ask you
15 this. Are you aware of the estimation that took place in the
16 first effort to confirm a plan in the Armstrong World
17 Industries bankruptcy?

18 A. I'd have to go back and refresh my memory. That's been a
19 number of years.

20 Q. Do you remember that Logistic Chambers was an estimator
21 in that case for the debtor and the equity?

22 A. I don't remember that.

23 Q. Do you remember that she proposed to Judge Newsome that
24 he should make the assumption that the Fair Act, and now I do
25 mean the Fair Act, the one that was bandied about in Congress

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1 in the middle of the 2000s, would pass and should be the basis
2 of the estimate adopted by the court? Do you remember that?

3 A. No. I don't.

4 Q. Well, I can tell you, as it will be of record in this
5 case, that Judge Newsome soundly rejected that proposition on
6 the basis that it's not appropriate for a debtor that's
7 seeking a discharge in injunction for the benefit of its
8 equity and at the expense of its creditors to make
9 self-serving assumptions about future changes in the law.

10 Does that strike you as a reasonable thing for Garlock to
11 do in the present circumstances?

12 MR. CASSADA: I'll object to the question, Your
13 Honor. He's already --

14 THE COURT: Sustain the objection. That's an
15 argument, not a question.

16 Q. Now, you acknowledge, do you not, that the bulk of
17 Garlock's claims resolved by settlement were settled in
18 groups?

19 A. Correct. Well, a lot of them were. I don't know -- it's
20 hard to quantify from the data because there's no flag that
21 reliably tells you that.

22 Q. Let me show you a slide Dr. Peterson used in his direct
23 examination, slide 17, the heading of which says, "As Garlock
24 became more a focus of the plaintiffs' cases, Garlock's
25 settlement practices changed: More group settlements than in

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1 the 1990s."

2 And he has some data there, which the way he classified
3 it anyway, the groups in the period 2006 to 2010 predominated
4 among settlements by 90 percent. Do you see that?

5 A. There's no way you can reliably know these numbers. They
6 aren't flagged.

7 Q. Do you think the -- do you think the overall picture
8 presented by that information is close to correct?

9 A. We can't know. There's no reliable way of flagging
10 groups within the data. This is a made up analysis.

11 Q. You know -- you know that Garlock had a group deal with
12 the most active asbestos firm in New York City.

13 A. Weitz?

14 Q. Weitz and Luxenberg.

15 A. Yes, I do. I'm very familiar with that.

16 Q. You know that it had a group deal with the most active
17 asbestos/personal injury law firm in Chicago, Cooney and
18 Conway?

19 A. Yes.

20 Q. You know that it had a group deal with the most active
21 asbestos/personal injury law firm in Madison County, Illinois,
22 Simmons --

23 A. I understand that was their practice.

24 Q. You know that in the middle of the decade, Garlock made a
25 group wide deal with Baron and Budd?

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1 A. That's my understanding.

2 Q. You know that they made a group deal of sorts with Waters
3 and Kraus?

4 A. That's my understanding as well.

5 Q. By the way, do you know when the three-year deal with
6 Waters and Kraus that followed the Treggett verdict was made?

7 A. Not as I sit here.

8 Q. June 2006. Does that surprise you?

9 A. No.

10 Q. The Treggett verdict was in 2004.

11 A. (No response.)

12 Q. Is that right?

13 A. I believe that's correct.

14 Q. Now, in group deals risk is priced in the aggregate with
15 respect to the group as a whole, isn't it?

16 A. No.

17 Q. You dispute that?

18 A. I do.

19 Q. On what basis?

20 A. The group deals are basically deals which allow for an
21 efficient resolution of a lot of claims to avoid the costs of
22 doing -- of resolving the claims. They always have opt out
23 provisions in them such that plaintiffs will opt out the cases
24 which provide any real trial risk associated with them.

25 Q. One of the benefits to Garlock is that as a practical

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1 matter, the group deals discourage trial, isn't that so?

2 A. No.

3 Q. Well, how many cases did --

4 A. Garlock can't -- Garlock cannot bind -- Garlock and the
5 plaintiffs' attorneys cannot bind the individual plaintiffs
6 who have a great case against Garlock from bringing that case
7 against Garlock.

8 Q. How many cases did Garlock try against Weitz and
9 Luxenberg after 1993?

10 A. There were numerous claimants that opted out of the Weitz
11 and Luxenberg --

12 Q. How many went to trial?

13 A. If they properly settled, very few --

14 Q. How many Waters and Kraus --

15 A. -- if any.

16 Q. -- clients went to trial against Garlock after June 2006?

17 A. We can find out.

18 Q. You don't know?

19 A. They each have settlements which would be not what would
20 be the amounts would be the group deals but rather would be
21 reflective of trial risk. Each one of those lawyers has
22 individual settlements which indicate, by my analysis, trial
23 risk, whether it's Weitz and Luxenberg, whether it was Cooney,
24 whether it was Waters and Kraus that are opted out of the
25 group deals.

CHARLES BATES - CROSS

1 That's -- the group deals basically serve as an efficient
2 way to handle the avoid -- the cost avoidance payments to a
3 large number of claimants. That's how they operate. They
4 confirm this analysis; they don't belie it.

5 Q. You take the same position with regard to the periodic
6 group settlements that Garlock made with the Kazan law firm?

7 A. Yes, I do.

8 Q. Now, in the context of group deals or otherwise, the
9 making of a settlement extinguishes a disputed tort claim and
10 replaces it with a contractual obligation, isn't that so?

11 A. I mean, I'm not that familiar with the details of those
12 contracts, but that seems reasonable.

13 Q. A payment obligation on behalf of the settling defendant,
14 correct?

15 A. Sounds -- that's what settlements would be, yes.

16 Q. Your notion of the true share of liability that Garlock
17 bears seemed to me when I heard it while we were sitting here
18 a little while ago to depend upon the extent of the emissions
19 of fiber from Garlock's product that would be ingested by the
20 mesothelioma victim. Is that your concept?

21 A. Well, no, that's one way of getting a handle on how you
22 might think about allocating it as I described.

23 Q. But that's a way that is rather foreign to the laws as we
24 have them in this country, isn't it?

25 A. Not really.

1 MR. SWETT: We'll leave that for briefing.

2 Thank you, Dr. Bates.

3 Thank you, Your Honor.

4 THE COURT: Thank you. Anything else?

5 MR. CASSADA: Thank you, Your Honor. We have no
6 questions for Dr. Bates.

7 THE COURT: I believe that --

8 MR. CASSADA: We do have --

9 THE COURT: I believe that will wind us up.

10 MR. CASSADA: We do have some housekeeping matters
11 to discuss --

12 THE COURT: All right.

13 MR. CASSADA: -- in relation to exhibits. But we
14 can excuse Dr. Bates.

15 THE COURT: You can step down.

16 THE WITNESS: Thank you, Your Honor.

17 (Witness stepped down.)

18 (Counsel conferred.)

19 MR. CASSADA: Your Honor, there's been a lot of
20 exhibits flying around in the course of the last four weeks.
21 We've conferred with the counsel for the committee and the
22 FCR, and what we propose to do is to exchange our witness
23 lists, both admitted and those that we had identified and
24 intend to ask the court to admit. And then we also have a lot
25 of exhibits that are associated with deposition designations.

1 Those will be offered as well. And then I think there must be
2 some other exhibits we've heard about that we'll want to talk
3 about and be able to at least refer to and use in the briefing
4 process.

5 THE COURT: Okay.

6 MR. CASSADA: The agreement, the arrangement that
7 we've talked about is exchanging those lists. We're prepared
8 to provide ours today. And then meeting and conferring within
9 the next couple of weeks. And then presenting the court with
10 a unified list. If there's any -- if there are any objections
11 to documents on the list, then we would note those. And if
12 they're referred to in the briefing, then Your Honor can
13 decide whether they would be admitted and how you would treat
14 such exhibits.

15 THE COURT: That sounds fine to me.

16 MR. SWETT: That's acceptable to the committee, Your
17 Honor.

18 THE COURT: And -- well, in some way we'll need to
19 have access to those exhibits as well.

20 MR. CASSADA: Yes, we would deliver them -- we're
21 thinking that we would deliver them electronically. There's
22 going to be a large number, particularly with respect to the
23 RFA case that you've heard about.

24 THE COURT: That will be fine.

25 MR. CASSADA: Okay. It might make sense to --

1 THE COURT: If you can teach me how to get to them
2 like your automation people do, I'll be greatly obliged.

3 MR. CASSADA: We might as well talk about briefing,
4 Your Honor. I believe when I left the courtroom early last
5 week you had raised that issue.

6 THE COURT: Right. And I don't know if you all had
7 a chance to talk about what kind of schedule you want to have
8 for --

9 MR. SWETT: We haven't, Your Honor. And we haven't
10 had a single conversation about it. I would like to do that.
11 I think we both would like to have a reasonably prompt
12 schedule, but there's a lot of material to cover.

13 So let us have the opportunity to see if we can
14 agree, the three of us -- the four of us, and present you with
15 a proposal.

16 THE COURT: I'm happy to live with whatever you all
17 can agree on. And if you can't agree on something, then I'll
18 try to referee it, I guess.

19 MR. CASSADA: One issue that we would seek to
20 resolve, and we'll do this through conference as well, is the
21 timing of the objections to our witnesses based on *Daubert*.
22 You might recall that you agreed to --

23 THE COURT: Right.

24 MR. CASSADA: -- extend that deadline and then offer
25 us an opportunity to --

1 THE COURT: Yeah.

2 MR. CASSADA: -- present evidence in the form of
3 affidavits to respond to those.

4 Seems like that has to happen before the briefs can
5 actually be written, so we need to take into account in our
6 schedule the *Daubert* motions and responses and the --

7 THE COURT: Okay.

8 MR. CASSADA: -- trial briefs.

9 THE COURT: If y'all can work out a schedule for
10 that, I'll be happy to go by that.

11 The only thing I would ask that -- one thing that
12 might -- that I think would be helpful to me is in your -- in
13 your post-trial briefs, if you can try to be pretty specific
14 about what you think you showed with each of your witnesses
15 and what you think you showed on cross examination of your
16 adverse witnesses, that would be helpful. Not necessarily a
17 quote by quote, but with some specificity.

18 MR. SWETT: Yes, Your Honor.

19 MR. CASSADA: We certainly can do that, Your Honor.

20 THE COURT: Okay. Anything else?

21 (No response.)

22 THE COURT: I will be around. Just -- whatever you
23 all come up with, just email me that, if you would, in terms
24 of schedule. And then we'll -- I'll just do like a short
25 order and enter that order and then the world will know what

1 that schedule is.

2 MR. CASSADA: Okay.

3 MR. SWETT: Your Honor, that's likely to be early
4 September because Mr. Cassada and I both have vacations next
5 week.

6 THE COURT: That's fine.

7 And let me congratulate you all and thank you all
8 for a wonderful job of presenting your cases. You've got
9 serious differences. That's obvious. I mean, you're only a
10 billion dollars apart. But you -- from the -- from the most
11 junior to the most senior person involved, it has been a joy
12 to watch you all work. And you've done an excellent job and I
13 think ought to be congratulated for that, both the lawyers and
14 the witnesses. I guess in a lot of cases, the witnesses have
15 a lot more experience than the lawyers do.

16 But it has been -- as somebody who, I guess, has had
17 the good fortune not to have to try a case in 25 years, it's
18 been fun for me to watch you all at work. And it's always fun
19 to watch good lawyers work and, as I say, you all ought to be
20 congratulated.

21 Thank you for the effort you've put into this. And
22 we -- I hope now that you've all beat each other to a bloody
23 pulp, maybe you can talk about settlement. If you can't, then
24 I'll do a decision and -- but, you know, I won't -- I'm not
25 one to try to beat people into settlement. The fear of what I

1 might do is probably the greatest motivator you may have
2 anyhow. But you can do a lot better job of it than I do, and
3 I know that you all know that and hopefully you'll be able to
4 do that. If not, then I'll do what I do and you all can go
5 from there.

6 So thank you, though, for all your efforts.

7 MR. SWETT: Thank you, Your Honor.

8 MR. CASSADA: Thank you, Your Honor.

9 ALL COUNSEL: Thank you, Your Honor.

10 (End of proceedings at 5:21 p.m.)

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4

5 I certify that the foregoing transcript is a true
6 and correct transcript from the record of proceedings in the
7 above-entitled matter.

8
9 Dated this 24th day of August 2013.

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s/Cheryl A. Nuccio
Cheryl A. Nuccio, RMR-CRR
Official Court Reporter